TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, ~~1904.~~ 1905.

No. ~~283~~. 105.

H. C. HERRICK, A. V. NOYES, CHARLES LABROSSE, LEON LARRIEU, W. S. GRAY, AND PETER CRANE, APPELLANTS,

vs.

BOQUILLAS LAND AND CATTLE COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FILED OCTOBER 7, 1904.

(19,483.)

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OCTOBER TERM, 1904.

No. 383.

H. C. HERRICK, A. V. NOYES, CHARLES LABROSSE, LEON LARRIEU, W. S. GRAY, AND PETER CRANE, APPELLANTS,

vs.

BOQUILLAS LAND AND CATTLE COMPANY.

APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

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1 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Plaintiff,
vs.
JOSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. GRAY, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodriges, Dolores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valensuela, Ben Heney, Wong Fook Ling, Charley Wong, Defendants.

Complaining of defendants above named plaintiff for cause of action alleges:

I.

That plaintiff is a corporation duly organized and existing under and by virtue of the laws of the State of California, and doing business in said Cochise county, Arizona, and, as plaintiff is informed and believes, the defendants in the above entitled action are residents of Cochise county, Territory of Arizona.

2 II.

That on the 1st day of January A. D. 1875 the plaintiff, its grantors and predecessors in interest, was, ever since has been, and now is the owner and entitled to the possession of those certain lands and premises situate, at this time, in said Cochise county and Territory of Arizona, and described as follows, to-wit: Beginning at the initial monument No. 1, about one mile east of the New Mexico and Arizona Railroad bridge which crosses the San Pedro river at the town of Fairbank in said county, and running thence north 15° 39′ west 27286 feet to a rock chiseled △ 2; thence north 1° 58′ east 12655 feet to a rock chiseled △ 3; thence north 88° 2′ west 10090 feet to a corner rock chiseled △ 4; thence south 1° 58′ west 14201 feet to a rock chiseled △ 5; thence south 15° 39′ east 28340 feet to a rock chiseled △ 6; thence south 10° 2′ east 33434 feet to a rock chiseled △ 7; thence north 79° 58′ east 10090 feet to a rock chiseled △ 8; thence north 10° west 33927 feet to the place of beginning, and containing 17355.86 acres of land, be the same more or less.

III.

That on or about the 28th day of November A. D. 1900 the defendants above named entered into the possession of the premises above described and dispossessed plaintiff of said premises and said

defendants now unlawfully withhold from plaintiff the pos-
3 session thereof to its damage in the sum of ten thousand dollars.

IV.

That the annual value of the rents and profits of the premises, the possession of which said defendants now so unlawfully withhold from plaintiff and *has* so withheld since the last mentioned day, is the sum of ten thousand dollars.

Wherefore plaintiff demands judgment against defendants for the possession of the premises hereinbefore described, for costs of this suit and for the said sum of ten thousand dollars damages and for the further sum of ten thousand dollars per year, the annual value of the said rents and profits, from the said 28th day of November, 1900.

ENGLISH & BOWMAN,
Attorneys for Plaintiff.

(Endorsed:) No. 2232. In the district court first judicial district, county of Cochise, Territory of Arizona. Boquillas L. & C. Co. *vs.* Joseph Curtis, *et al.* Civil action for ejectment. Filed Aug. 26th, 1901. A. H. Emanuel clerk. English & Bowman, plaintiff's attorney-.

4 In the District Court of the First Judicial District, Territory of Arizona, County of Cochise.

Boquillas Land and Cattle Company, Plaintiff,
vs.
A. V. Noyes, H. C. Herrick, P. B. Crane, L. Larrieu, W. S. Gray, Wong Fook Ling, Charley Wong, Defendants.

Now comes the defendants and for answer to the plaintiff's complaint demurs to the same on the ground that it does not set forth a cause of action.

Wherefore they ask to be hence dismissed with their costs.

And further answering said complaint defendants deny each and every allegation in said complaint contained.

And for further answer to said complaint defendants allege, that for more than twenty years last past, they and each of them and their predecessors in interest, have occupied owned and possessed, the piece and parcel of land now in his and their possession and within the boundaries of the tract of land described in the complaint, continually down to the present time, and have been in the uninterrupted, sole, exclusive and actual *siezen* and possession of the said premises and every part and parcel thereof, claiming to have and hold the same as sole and
5 exclusive owners thereof in fee simple and during the whole of that time have been in the sole and exclusive receipt

and enjoyment of the rents, issues, profits, avails and proceeds thereof, to their own sole and separate use and benefit, claiming to be of right entitled so to receive and enjoy the same, and without having paid over or accounted for to the plaintiff or any person under whom it claims to derive title, for any part of such rents issues, profits or avails, and without having ever, at any time, or in any manner, held or possessed said described premises or any part or parts thereof, or any estate, right, title or interest therein, or any rents, issues or profits of or arising out of the same, or any part thereof, or any share or interest therein, or any part thereof, in common and undivided with or as trustee of plaintiff, or of any other person or persons, under whom it claims to derive title, and without having ever acknowledged or admitted that they or either of them was bound either in law or equity, to pay over or account for any part of such rents, issues and profits to the plaintiff, or any person under whom it claims to derive title, and without having admitted or acknowledged by themselves or by their agents or otherwise, that the plaintiff and those under whom it claims to derive title had any estate, share or interest, or any estate, share or interest, claim or demand whatsoever in or to said premises or any part thereof, or in or to the rents issues and profits of or arising out of the same.

6 That during the time hereinbefore mentioned they have reclaimed the portion of said land, held and possessed by them respectively, from waste to arable, constructed ditches for the conveyance of water thereto for irrigating purposes, built dwelling houses, barnes and outhouses and placed improvements upon each parcel owned and possessed by them respectively of the value of over seven thousand dollars. That their and each of their occupancy and possession and claim of ownership of said land and premises during all of said time was well known to plaintiff and its grantors and predecessors in interest, and no demand was ever made by it or them upon defendants or either of them or their grantors or predecessors in interest, for the possession of said land and premises or for the rents issues and profits of the same.

And further answering defendants specially pleads as a defense to this action the provisions of an act of the legislature of the Territory of Arizona, title XLIV chapter one R. L. of Arizona. First, that the cause of action set forth in plaintiff's complaint accrued more than five years prior to the commencement of said action; second, that the cause of action set forth in plaintiff's complaint accrued more than three years prior to the commencement of said action; third, that the cause of action set forth in plaintiff's complaint accrued more than two years prior to the commencement of said action. That each defendant for himself alleges, that he claims title to the portion of said land possessed by him exclusive

7 of his co-defendants or either of them, and not jointly or as tenant in common with them or either of them, and his defense to said action is separate distinct and peculiar to him, ex-

clusive of the other defendants or either or any of them, and he disclaims any interest estate or title to any portion of the land described in the complaint, save the piece or parcel he is in possession of and claims to own in his own separate right.

Wherefore defendants ask to be hence dismissed with their costs. That they each may have a separate trial of the issues herein. For general relief.

BEN MORGAN,
Attorney for Defendants.

(Endorsed:) No. 2232. First district court, Cochise county, A. T. Boquillas Land and Cattle Company *vs.* H. C. Herrick *et al.* Answer. Filed Aug. 31st, 1901. A. H. Emanuel, clerk.

8 In the District Court of the First Judicial District, Territory of Arizona, in and for the County of Cochise.

BOQUILLAS LAND AND CATTLE COMPANY, Plaintiff,
vs.
JOSEPH N. CURTIS ET AL., Defendants.

Take notice that the defendants who have answered in the above entitled cause now come and move the court for a new trial thereof. The grounds of said motion are as follows:

That the evidence does not support said findings and judgment.

That said findings and judgment are against law.

The court erred in rendering judgment in favor of plaintiff and against defendants.

The court erred in not rendering judgment for defendants.

That said findings do not support the judgment entered herein.

BEN MORGAN,
Attorney for Defendants.

To English and Bowman, attorneys for plaintiff.

(Endorsed:) 2232. Territory of Arizona, county of Cochise 1st dist. court. Boquillas Land and Cattle Company, *vs.* Joseph N. Curtis, *et al.* Motion for new trial. Service admitted by copy this June 25, 1902. English & Bowman, att'ys. Filed June 25, 1902, Geo. B. Wilcox, clerk.

9 In the District Court First Judicial District, of the Territory of Arizona in and for the County of Cochise.

BOQUILLAS LAND AND CATTLE CO., Plaintiff,
v.
J. N. CURTIS ET AL., Defendants.
Undertaking for Costs and Damages on Appeal.

Whereas, the defendants in the above-entitled action have appealed to the supreme court of the Territory of Arizona, from a

judgment entered against defendants in said action, in said district court, in favor of the plaintiff in said action, on the 25th day of June 1902, for *for* the recovery of certain lands mentioned in the complaint together with accrued rents and profits. And the sum of $200. having been fixed by the clerk of the court as the probable costs of the appellate court and the court below.

Now, therefore, in consideration of the premises, and of such appeal, we, the undersigned, do hereby jointly and severally undertake and promise, on the part of the appellants that the said appellants will pay all damages and costs which have accrued in the court below or that may accrue in the appellate court on the appeal, or on a dismissal thereof, not exceeding four hundred dol-
10 lars, to which amount we acknowledge ourselves jointly and severally bound.

F. N. WOLCOTT. [SEAL.]
W. R. KING. [SEAL.]

Dated this 28th day of June, 1902.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

F. N. Wolcott and W. K. King, the persons named in and who subscribed the foregoing undertaking as the sureties thereto, being severally duly sworn, each for himself, says: That he is a resident and householder within said Territory of Arizona and is worth the amount specified in said undertaking as the penalty thereof, over and above all his just debts and liabilities, exclusive of property exempt from execution.

F. N. WOLCOTT.
W. R. KING.

Subscribed and sworn to before me this 28th day of June, 1902.
[SEAL.] GEO. B. WILCOX, Clerk.

(Endorsed:) No. 2232. Dist. court, county of Cochise. Boquillas Land & Cattle Company, plaintiff *v.* J. N. Curtis, *et al.*, defendants. Undertaking on appeal. Approved and filed June 28th, 1902. Geo. B. Wilcox, clerk. Ben Morgan attorney for def'ts. appellants.

11 In the District Court of the First Judicial District, Territory of Arizona, in and for the County of Cochise.

BOQUILLAS LAND AND CATTLE COMPANY, Plaintiff, }
vs.
J. N. CURTIS ET AL., Defendants. }

Stipulation.

It is hereby stipulated by counsel for the respective parties, that the defendants who have answered, testified on the trial hereof, that

they and each of them, their grantors and predecessors in interest had been in the actual occupancy and possession of the lands occupied by them and within the exterior boundaries of the San Juan de las Boquillas y Nogales grant mentioned in the complaint for more than ten years continuously next preceding the commencement of this action.

That during all of said time they had never in any manner recognised plaintiff's or its grantors or predecessors in interest, title to said lands or any part or parcel of the same.

That during said time they had placed improvements on said lands, enclosed *it* by substantial fence and cultivated the same.

ENGLISH & BOWMAN,
Attorneys for Plaintiff.
BEN MORGAN,
Attorney for Defendants.

12 The foregoing agreement of counsel is hereby approved.

FLETCHER M. DOAN, Judge.

(Endorsed:) 2232. Dist. court 1st judicial district Territory of Arizona, county of Cochise. Boquillas Land and Cattle Company *vs.* J. N. Curtis, *et al.* Stipulation as to evidence. Filed July 7, 1902. Geo. B. Wilcox, clerk.

13 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Plaintiff,
vs.
J. N. CURTIS ET AL.

It is hereby stipulated by counsel for the respective parties that the transcript on appeal in the above entitled cause shall consist of the following documents and record; the complaint, answer, findings, decree, notice of motion for a new trial, order denying said motion, order allowing appeal, stipulation as to defendants' occupancy, Plaintiff's Exhibit No. — (patent) omitting metes and bounds, Plaintiff's Exhibit No. — (deed from Hearsts to the plaintiff corporation), Defendants' Exhibits No. 2 and 3 (certificates of the surveyor general), bond on appeal, assignment of errors, this stipulation, the stipulation that plaintiff was and is a corporation duly authorized to do business in Cochise county, Territory of Arizona.

ENGLISH & BOWMAN,
Attorneys for the Plaintiff.
BEN MORGAN,
Attorney for the Defendant.

(Endorsed:) 2232. Dist. court first dist. Cochise county, Arizona. Boquillas Land and Cattle Company *vs.* J. N. Curtis, *et al.* Stipulation as to transcript. Filed Jul- 8, 1902. Geo. B. Wilcox- clerk, dist. court.

14 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

BOQUILLAS LAND AND CATTLE CO., Plaintiff,
vs.
JOSEPH CURTIS ET AL., Defendants. } Reg. No. 2232.

June 25, 1902.—Motion made by Ben Morgan Esq., attorney for defendant-, for a new trial, was by the court denied ; a stay of execution for sixty days was granted. Notice given by defendants' attorney in open court to appeal to the supreme court.

I, Geo. B. Wilcox, clerk of the district court, Cochise county, do hereby certify that the above is a true copy of the minute orders in the above entitled case, called for by stipulation of parties, as a part of the record on appeal.

Witness my hand and seal this 30th day of July, 1902.

[SEAL.] GEO. B. WILCOX, Clerk.

(Endorsed:) No. 2232. In the district court of the first judicial district, county of Cochise. Boquillas Land and Cat. Co. plaintiff *vs.* J. N. Curtis, *et al.*, defendants. Minute orders.

15 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Plaintiff,
vs.
JOSEPH N. CURTIS ET AL., Defendants.

This cause coming on regularly to be heard on the 5th day of June, 1902, before the court sitting without a jury, (a trial by jury having been expressly waived by the respective parties.) Messrs. English & Bowman, appeared as attorneys for the plaintiff, and Ben Morgan, Esq., appeared as attorney for the defendants answering, others of the defendants having defaulted and others thereof having filed their disclaimers herein ; the case proceeded to trial ; witnesses were duly sworn and testified and documentary evidence introduced and filed for and in behalf of the respective parties; and the evidence being concluded the cause was argued by respective counsel and submitted to the court for its consideration and decision: Whereupon the court took the matter under advisement, and now

on this the 23rd day of June, 1902, the court being fully advised as to the law and the evidence aforesaid, finds the following facts:

16 That all of the defendants named and mentioned in the plaintiff's complaint herein were personally served with summons and complaint herein, within this Cochise county, and that the premises, the subject of this suit are situated within this Cochise county; that the defendants, James Herrick, P. A. De Martini, Elijah Clifford, Antonio Zamora, George G. McGee, Carmen Zamora, Frank Wild, Ben Heney, P. A. De Martini & Co., have filed disclaimers herein to the property sued for, and each and every part and portion there-, and that the defendants, Frank Joeger, Charles Le Brosse, Leandro Rodriguez, Miguel Valenzuela, Dolores Padia, Carmen Zamora, Nicanoro Ochoa, A. V. Noyes, H. C. Herrick, Kate Harrington, Peter Crane, Joseph Curtis, Samuel Curtis, W. S. Gray, Leon Larrieu, Wong Fook Ling, Charley Wong, filed their answers in writing herein, and that all of the other defendants herein, not so disclaiming or answering, have failed to appear and answer plaintiff's complaint, their default for not so appearing or answering was duly entered, after their time for so doing had long since expired.

That for more than one year last past, the plaintiff has been, and still and now is a corporation duly organized and existing under and by virtue of the State of California, authorized to do business and doing business in Cochise county, Territory of Arizona, and having a duly authorized legal agent residing therein.

17 That on the — day of May, A. D. 1833, the Mexican government, by good and sufficient grant conveyed to plaintiff's grantors and predecessors in interest the lands and premises herein described, being the lands and premises in controversy.

That on the 14th day of December, in the year of our Lord, one thousand nine hundred, the Government of the United States, by its letters patent, recognized and confirmed the validity of the said grant of lands in plaintiff's complaint, and hereinafter particularly described, to Ygnacio Elias Gonzales and Nepumoceno Felix, and to their heirs, successors in interest and assigns forever; and found and decreed that W. R. Hearst and Phœba A. Hearst had acquired an undivided interest in such lands and premises of the said two grantees.

That on the 3d day of July 1901, the said W. R. Hearst and Phœba A. Hearst, by deed in writing, conveyed all of their said interest in and to the said lands and premises to the plaintiff herein, and that plaintiff has not since disposed of its title so acquired, or any part thereof, to said lands and premises.

That each and every of said defendants in this cause were, on the 14th day of December, 1900, and had been for more than ten years next preceding that date, occupying various portions of the said lands and premises, and each and every of the said defendants who so answered herein, and also those of said defendants who have

failed to appear and answer herein, have since the last named
18 date, with-held possession of divers portions of said lands and premises from the plaintiff and its grantors and predecessors in interest, and still and now, so withhold the same; that since the said December 14th, 1900, the annual value of the rents, issues and profits of that part of said lands and premises so withheld from plaintiff, by the said defendants, is as follows, to-wit:

By the defendant, Charles Le Brosse, the sum of.....	$400.00
By the defendant, A. V. Noyes, the sum of.....	$400.00
By the defendant, Peter Crane, the sum of.....	$450.00
By the defendant, W. S. Gray, the sum of.....	$500.00
By the defendant, H. C. Herrick, the sum of.....	$700.00
By the defendant, Frank Joeger, the sum of.....	$100.00
By the defendant, Leon Larrieu, the sum of.....	50.00

And now, as conclusions of law, from the foregoing facts, the court now hereby finds and decides that, this court has jurisdiction of the parties and subject matter herein.

That all the material allegations of the plaintiff's complaint are sustained by evidence free from objection as to its competency, relevancy, admissibility and sufficiency, except as limited by the facts especially found herein.

That plaintiff and its predecessors and grantors in interest have been since the first day of January, 1875, and ever since *has* been, and still *is*, the owner and entitled to the possession of the lands and premises in plaintiff's complaint and hereinafter particularly described, and each and every part and portion thereof. That none of the defendants are entitled to possession of said lands and
19 premises, or any part or portion thereof, and that plaintiff is entitled to the immediate possession of the whole of said lands and premises, and to have judgment entered therefor, and to a writ of possession thereunder; and also to its costs herein expended, taxed at $137.30 *dollars*, which costs shall be taxed against all of the defendants, except those who have filed their disclaimers herein, and plaintiff shall also have judgment for the rents, issues and profits of said premises in accordance with the facts as found herein, for all of which let judgment be entered and the appropriate writ of possession and writ of execution issue.

The said lands and premises in the complaint herein mentioned and described, and hereinbefore referred to, are described as follows, to-wit:

That certain grant of land known as, designated and called, the San Juan de Los Boquillas y Nogales, situated in Cochise county, Territory of Arizona, the exterior boundaries of which are as follows: Beginning at the initial monument number one, about one mile east of the New Mexico and Arizona Railroad bridge, which crosses the San Pedro river at the town of Fairbank, in said county, and running thence north fifteen degrees thirty-nine minutes west 27,286 feet to a rock chiseled △ 2; thence north 1° 58′ east

12655 feet to a rock chiseled △ 3; thence north 88° 2′ west 10090 feet to a corner rock chiseled △ 4; thence south 20 1° 58′ west 14201 feet to a rock chiseled △ 5; thence south 15° 39′ east 28340 feet to a rock chiseled △ 6; thence south 10° 2′ east 33434 feet to a rock chiseled △ 7; thence north 79° 58′ east 10090 feet to a rock chiseled △ 8; thence north 10° west 33927 feet to the place of beginning, and containing 17355.86 acres of land, be the same more or less.

Dated this June 23rd, A. D. 1902.

FLETCHER M. DOAN, Judge.

(Endorsed:) No. 2232. In the district court of the first judicial district county of Cochise. Boquillas Land & Cattle Co. a corporation, pl'ff. *vs.* J. N. Curtis, *et al.*, def't-. Findings of fact & conclusions of law.

21 In the District Court of the First Judicial District of the Territory of Arizona in and for Cochise County.

BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Plaintiff,

vs.

JOSEPH N. CURTIS, FRANK JOEGER, CHARLES LEBROSSE, LEANDRO Rodriquez, Miguel Valenzuela, Dolores Padia, Carmen Zamora, Nicanoro Ochoa, A. V. Noyes, H. C. Herrick, Kate Harrington, Peter Crane, Samuel Custis, W. S. Gray, Leon Larrieu, Wong Fook Ling, Charley Wong, Charles Noyes, —— Willis, Miles Noyes, John Gephart, Eutimio Acuna, Joe Escaig, James Herrick, P. A. De Martini, Elijah Clifford, Antonio Zamora, Geo. G. McGee, Carmen Zamora, Frank Wild, Ben Heney, and P. A. De Martini & Co., Defendants.

This cause coming on regularly to be heard on the 5th day of June A. D., 1902, before the court sitting without a jury, (a trial by jury having been expressly waived by the respective parties), Messrs. English & Bowman appeared as attorneys for the plaintiff, and Ben Morgan, Esq., appeared as attorney for the defendants answering, who are the first named seventeen defendants in the above entitled cause; the next thereafter seven named defendants in the 22 above entitled cause having made default herein for not appearing and answering, which default has been duly entered, and the last named nine defendants having filed their disclaimers herein, whereupon the trial proceeded, and witnesses were sworn and testified in behalf of the respective parties and documentary evidence was introduced and filed, and the evidence then being closed, the cause was argued by respective counsel and submitted to the court for consideration and decision; and the court now being fully advised in the premises orders that judgment be entered herein in favor of the plaintiff and against all of the defendants herein for the

possession of the premises in the plaintiff's complaint described; and hereinafter mentioned and described, and also judgment herein in favor of plaintiff and against all of the defendants herein (excepting the last nine named defendants in the above entitled cause, who have so disclaimed herein) for the plaintiff's costs of this action, and judgment is also ordered entered herein in favor of plaintiff for the value of the rents, issues and profits of said premises since the 14th day of December 1900, and against the following named defendants, and in the following mentioned sums per annum, that is to say; against the defendant Charles Lebrosse in the sum of four hundred dollars per annum since said last named day; against the defendant A. V. Noyes for the sum of four hundred dollars per annum since said day; against defendant Peter Crane for the sum of four
23 hundred and fifty dollars per annum since said day; against defendant W. S. Gray for the sum of five hundred dollars per annum since said day; against the defendant H. C. Herrick for the sum of seven hundred dollars per annum since said day; against the defendant Frank Joeger for the sum of one hundred dollars since said day, and against the defendant Leon Larrieu for the sum of fifty dollars since said last named day, and that plaintiff have writ of possession for said lands and premises and execution for said money judgment,

Wherefore, by reason of the law and the evidence, it is now hereby ordered, adjudged and decreed that plaintiff do have and recover of and from the defendants in this action immediate possession of all and every part parcel and portion of that certain tract of land in the plaintiff's complaint and also now hereby mentioned and described as follows, to-wit: That certain grant of land known as, designated and called the San Juan de los Boquillas y Nogales, situated in said Cochise county, Territory of Arizona, the exterior boundaries whereof being as follows, viz: Beginning at the initial monument No. 1 about one mile east of the New Mexico and Arizona Railroad bridge which crosses the San Pedro river at the town of Fairbank in said county, and running thence north 15° 39″ west 27,286 feet to a rock chiseled △ 2; thence north 1° 58″ east 12,655 feet to a rock chiseled △ 3; thence north 88° 2″ west 10,090 feet
24 to a rock chiseled △ 4; thence south 1° 58″ west 14,201 feet to a rock chiseled △ 5; thence south 15° 39″ east 28,340 feet to a rock chiseled △ 6; thence south 10° 2″ east 33,434 feet to a rock chiseled △ 7; thence north 79° 58″ east 10,090 feet to a rock chiseled △ 8; thence north 10° west 33,927 feet to the place of beginning and containing 17,355.86 acres of land be the same more or less. And that plaintiff also have and recover of and from all of the defendants herein who have not been above specified as disclaimants herein, for its costs and disbursements in this action taxed at 137.30 / 100 dollars. And that plaintiff do also have and recover of and from the following named defendants the following specified sums respectively, being the said rents, issues and profits due from each of them respectively, to this date, viz: From the defendant

Charles Lebrosse the sum of six hundred dollars; from the defendant A. V. Noyes, the sum of six hundred dollars; from the defendant Peter Crane the sum of six hundred and seventy five dollars; from the defendant W. S. Gray the sum of seven hundred and fifty dollars; from the defendant H. C. Herrick the sum of ten hundred and fifty dollars; from the defendant Frank Joeger the sum of one hundred and fifty dollars and from the defendant Leon Larrieu the sum of seventy five dollars.

That plaintiff have immediate writ of possession for said lands and premises above described, and writ of execution against all of the said defendants who have not so disclaimed herein, for its costs of suit so taxed as above set forth, and also writs of execution against the last seven named defendants for the said sums for which judgment is entered against them respectively.

Done in open court this the 25th day of June A. D., 1902.

FLETCHER M. DOAN, Judge.

(Endorsed:) No. 2232. In the district court of the first judicial district, county of Cochise. Boquillas Land & Cattle Co. a corporation, pl'ff. *vs.* J. N. Curtis, *et al.*, def'ts. Judgment.

In the District Court of the First Judicial District of the Territory of Arizona in and for the County of Cochise.

BOQUILLAS LAND & CAT. CO., a Corporation, Plaintiff,
against
JOSEPH N. CURTIS ET AL., Defendant-.

I, the undersigned clerk of the district court of the first judicial district of the Territory of Arizona, in and for the county of Cochise, do hereby certify the foregoing to be a true copy of the judgment entered in the above entitled action, and recorded in Judgment Book 4 of said court, at pages 105–109. And I further certify that the foregoing papers, hereto annexed, constitute the judgment roll in said action.

Witness my hand and the seal of the district court, this [SEAL.] 25th day of June, A. D., 1902.

GEO. B. WILCOX, Clerk.

(Endorsed:) No. 2232. District court of the first judicial district of the Territory of Arizona, county of Cochise. Boquillas Land & C. Co. a corporation, plaintiff *vs.* Joseph N. Curtis, *et al.*, defendant-. Judgment roll. Filed June 25th, 1902. Geo. B. Wilcox, clerk.

No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al. vs.* Boquillas Land & Cattle Co. Judgment roll. Filed August 21, 1902. James Allen Cox, clerk. By Angie B. Parker, deputy.

27 4-446.

The United States of America to all to whom these presents shall come, Greeting:

Whereas under the provisions of the act of Congress, approved on the third day of March one thousand eight hundred and ninety-one entitled "An act to establish a Court of Private Land Claims and to provide for the settlement of private land claims in certain States and Territories" the private land claim known as the Rancho San Juan de las Boquillas y Nogales, was duly presented by petition by W. R. Hearst and Phebe A. Hearst to the Court of Private Land Claims for confirmation.

And whereas, the title in said grant was, on the fourteenth day of February one thousand eight hundred and ninety-nine confirmed by the Court of Private Land Claims to Captain Ygnacio Gonzales and Nepumoceno Felix the original grantees, and to their heirs, successors in interest and assigns the decree of approval and confirmation as certified to the General Land Office, being in words and figures as follows, to-wit:

Certificate of the Clerk.

"Court of Private Land Claims, District of Arizona, *ss:*

"To the Commissioner of the General Land Office, Washington, D. C.

"SIR: I, James H. Reeder, clerk of the Court of Private
28 "Land Claims do hereby certify that the decision or decree of "confirmation by said court of the private land claim known "and designated as Rancho San Juan de las Boquillas y Nogales in "the cause entitled W. R. Hearst, Phebe A. Hearst, *et al.*, *vs.* The "United States *et al.*, numbered 42 on the dockets of said court (a "true copy of which said decision or decree is hereto attached) has "become final.

"Given under my hand and the seal of said court at Tucson, Ari-"zona, this sixteenth day of August, A. D., 1899.

"JAMES H. REEDER, Clerk,
"[SEAL.] By R. L. LONG, Deputy Clerk.

"Certificate.

"U. S. Court of Private Land Claims, District of Arizona, *ss:*

"I hereby certify that the paper attached hereto is a full, true and "correct copy of the paper of which it purports to be a transcript, on "file in my office, & of record in Journal 1 pages 126 & 127.

"Given under my hand and the seal of said court at Tucson, this "16th day of August, 1899.

"JAMES H. REEDER, Clerk.
"[SEAL.] R. L. LONG, Deputy Clerk.

29 "In the United States Court of Private Land Claims, Sitting
"at Tucson, Arizona, January Session, 1899.

"W. R. HEARST and PHŒBE A. HEARST, Plaintiffs,
"*vs.*
"THE UNITED STATES ET AL., Defendants. } No. 42.

"This cause having heretofore come on for hearing upon the "pleadings and upon the evidence taken on behalf of claimant and "defendants, the court after considering the evidence submitted in "the cause hereby adjudges and decrees as follows, to-wit:—

"I.

"That a grant was made on the 8th day of May 1833 by José "Maria Mendoza, treasurer general of the sovereign State of Sonora "and in its name unto Captain Ygnacio Elias Gonzales and Nepu- "moceno Felix of a tract of land known as Rancho San Juan de las "Boquillas y Nogales, consisting of four (4) square leagues of land "situated within the jurisdiction of the then presidio of Santa "Cruz, in said State of Sonora, and now situated in the county of "Cochise, Territory of Arizona, and more particularly hereinafter de- "scribed.

"II.

"That the said grant was an auction sale of the said tract made
"by the said treasurer general of the State of Sonora to the
30 "said grantees for the price of sixty dollars ($60.00) per league,
"which price was paid therefor by the said grantees named "unto the treasurer of the said State.

"III.

"That said sale and grant were so made under and in pursuance "of that certain law generally known as decree No. 70 of the gen- "eral congress of the United States of Mexico, issued on the 4th "day of August, 1824; and also under law No. 30, of the 20th "of May, 1825, enacted by the constituent congress of the then "United States of Sonora and Sinoloa, and also under other decrees "and succeeding legislation relative thereto, authorizing such grant "and sale so to be made by said treasurer general, all of which laws "are hereby referred to as being those under which said grant is "confirmed. And reference is also hereby made to that certain "treaty made between the United States and the Republic of Mexico "on the 30th day of December 1853, under which as well as said "laws before referred to, such confirmation is made.

"IV.

"That at the trial of this cause upon full legal proof and hearing "the petition herein was sustained by satisfactory proofs, and it was "also shown that said grant and sale of the tract herein described "constituted a valid title lawfully and regularly derived from the
"government of Mexico, and from the State of Sonora, in said
31 "Republic of Mexico, having lawful authority to make the
"same, and that the said title was perfect and complete at the "date of the acquisition of the territory by the United States; and "that said grant and sale to said grantees constitutes such a valid "title, that the United States are bound upon the principles of public "law and by the provisions of the treaty of cession, to respect it as "a valid, complete and perfect title, at said date.

"V.

"That no part of the premises for which confirmation is made as "hereinafter described has been disposed of by the United States.

"VI.

"That at said trial it was made to appear that every condition "and requirement stated in said grant as incumbent upon said "grantees, to be performed, was performed within the time and in "the manner stated in said grant.

"VII.

"That the confirmation of the said grant herein decreed shall not "confer any right or title to any gold, silver, or quick-silver, mines "or minerals contained in such lands, but all such mines and min-"erals shall remain the property of the United States with the right "of working the same, which facts shall be stated in any patents "issued under this decree.

"VIII.

"That this confirmation is made subject to all of the lim-
32 "itations herein expressed, and subject to all the limitations
"and terms of the act of Congress of March 3rd, 1891.

"IX.

"That claimants have acquired an undivided interest in and to "the said lands hereinafter described, by conveyance executed to "them by heirs at law of the original grantees hereinbefore named

"X.

"Now, therefore, in consideration of the premises and by virtue "of the power vested in this court by the provisions of that certain "act of Congress approved March 3rd, 1891, confirmation is hereby "made and decreed of the said title of the said Captain Ygnacio Elias "Gonzales and Nepumoceno Felix, and of their heirs, successors in "interest and assigns in and to all of the said tract San Juan de las "Boquillas y Nogales, which tract is situated in the county of Co-"chise, Territory of Arizona, and particularly described, located and "bounded as follows, to-wit:—

"Starting at post marked S. J. B. N. No. 1 at a point on the San "Pedro river at the mouth of the Babocomari creek, north 77 de-"grees 10′ east, five thousand fifty-one and four tenths (5,051.4) feet "to post No. 2; thence north 15 degrees 39′ west—twenty-seven "thousand three hundred and fifty-six (27,356) feet to post No. 9; "thence north 1 degree 58′ east twelve thousand six hundred and "fifteen (12,615) feet to post No. 12; thence north 88 degrees
33 "02′ west ten thousand ninety and eight tenths (10,090.8) feet "to post No. 11; thence south 1 degree 58′ west fourteen "thousand one hundred and nine and thirty-eight one hundredths "(14,109.38) feet to post No. 8; thence south 15 degrees 39′ east "twenty-eight thousand four hundred and fifty (28,450) feet to post "No. 3; thence south 10 degreas 02′ east thirty-three thousand five "hundred and seventeen and twenty-four one hundredths (33,517.24) "feet to post No. 5; thence north 79 degrees 58′ east ten thousand "ninety and eight tenths (10,090.8) feet to post No. 6; thence north "10 degrees 02′ west thirty-three thousand nine hundred and eighty "six (33,986) feet to post No. 2, the point of beginning on the perim-"iter, as per survey of said grant made by Solon M. Allis, con-"taining four (4) square leagues, or seventeen thousand three hun-"dred and fifty-five and eighty-six one hundredths (17,355.86) acres, "the map and field notes of which are on file in the office of the "surveyor general of the United States for Arizona.

"And the claim of claimants to all other land not so confirmed is "rejected.

"Done in open court at Tucson, Arizona Territory, this 14th day "of February, A. D. 1899.

"JOSEPH R. REED,
Chief Justice.

"[SEAL.]

34 "Attest:
"A true copy,

"JAMES H. REEDER, Clerk,
"By R. L. LONG, Deputy."

And whereas, the said claim having been surveyed, and the plat and field notes thereof having been presented to the Court of Private

Land Claims for consideration, the said court approved the same, the order of approval being endorsed on the plat:

And whereas, there have been deposited in the General Land Office the said plat of survey and descriptive notes of said claim, the same are herein inserted and made a part of these presents, and are in the words and figures following, to-wit:—

Hereto attached is a plat of the San Juan de los Boquillas y Nogales, private land claim containing 17,355.86 acres.

"Descriptive notes of the survey of the San Juan de las
"Boquillas y Nogales private land grant.

"Proceed to a point five thousand and fifty-one and four "tenths feet north seventy-seven degrees ten minutes east "of the initial point where is established angle corner No. 1 "and the beginning corner of this grant.

"A granite stone twenty by twenty by ten inches, fifteen "inches in the ground marked S. J. B. N. △ 1 on west face "and P. L. on east face with pits north fifteen degrees "and thirty nine minutes west and south ten degrees and "two minutes east and mound of stone south of corner.

"A telegraph pole of the Arizona and South-
35 "eastern Railroad station in the town of Fair-
"bank bears north seventy degrees and forty nine minutes west about one half of a mile. Rincon peak bears north thirty one degrees and thirty nine minutes west. Huachuca peak No. 1 bears south thirty-seven degrees and twenty minutes west.

"Said beginning corner is on the east boundary of this grant and is in latitude thirty one degrees forty-two minutes thirty seconds north, longitude one hundred and ten degrees eight minutes and forty two seconds.

"Northern portion of east boundary.

"Magnetic variation twelve degrees and thirty minutes east From the beginning corner just described, thence north fifteen degrees and thirty nine minutes west five hundred and ninety four feet, road bears northeast and southwest.

"Eight hundred and sixty feet, wash, one hundred and fifty feet wide, course west.

"One thousand two hundred and fifty two feet road from Tombstone to Fairbank east and west.

"One thousand four hundred and sixty six feet telegraph line between same points east and west.

"One thousand six hundred and fifty feet, wash fifty feet wide, course west.

"Two thousand six hundred feet begin ascent of ridge east and west.

"Two thousand six hundred and forty feet set a granite
6 "stone twenty-one by ten by ten inches, fifteen and one half
"inches in the ground for one half mile corner, marked S. J.

"B. N. ½ M. on west face and P. L. on east face with pits and mound
"of earth. Five thousand two hundred and eighty feet set a
"granite stone twenty by ten by ten inches, fifteen inches in the
"ground, for one mile corner, marked S. J. B. N. 1 M. on west face
"and P. L. on east face, with pits and mound of earth.

"Seven thousand nine hundred and twenty feet set a porphyry
"stone twenty by thirteen by nine inches, fifteen inches in the
"ground, for one and one-half mile corner, marked S. J. B. N. 1½
"M. on west face and P. L. on east face with pits and mound of
"earth.

"Eight thousand four hundred feet, road from Tombstone to
"Grand Central mill bears northeast and southwest.

"Nine thousand two hundred feet, Grand Central dwelling house
"about one half a mile west.

"Ten thousand five hundred and sixty feet set a granite stone
"thirty by ten by eight inches, twenty-three inches in the ground,
"for two mile corner marked S. J. B. N. 2 M. on west face and P. L.
"on east face, with pits and mound of earth.

"Eleven thousand three hundred and fifty feet, center of wash,
"two hundred feet wide, course west.

"Eleven thousand four hundred and sixty feet, steep ascent from
"wash.

"Thirteen thousand two hundred feet set lime stone thirty
37 "by fourteen by eight inches, twenty three inches in the
"ground, for two and one half mile corner, marked S. J. B. N.
"2½ M. on west face and P. L. on east face with pits and mound of
"earth.

"Fifteen thousand eight hundred and forty feet set a granite
"stone twenty by ten by ten inches, fifteen inches in the ground for
"three mile corner, marked S. J. B. N. 3 M. on west face and P. L.
"on east face, with pits and mound of earth.

"Sixteen thousand six hundred and thirty feet, road from Tomb-
"stone to Contention mill bears south east and north west.

"Seventeen thousand two hundred and fifty feet, old road between
"same points.

"Eighteen thousand four hundred and eighty feet set a granite
"stone twenty by fifteen by nine inches, fifteen inches in the
"ground, for three and one half mile corner, marked S. J. B. N.
"3½ M. on west face and P. L. on east with pits and mound of
"earth

"Twenty one thousand and seventy feet, leave rough ground and
"enter flat.

"Twenty one thousand one hundred and twenty feet set a granite
"stone twenty by twelve by twelve inches, fifteen inches in the
"ground, "for four mile corner, marked S. J. B. N. 4 M. on west
"face and P. L. on east with pits and mound of earth.

"Twenty two thousand three hundred and twenty feet enter roll-
"ing country.

"Twenty three thousand seven hundred and sixty feet set
38 "a lime stone twenty-one by twelve by ten inches, fifteen and
"one half inches in the ground for four and one half mile
"corner, marked S. J. B. N. 4½ M. on west face and P. L. on east face
"with pits and mound of earth.

"Twenty four thousand and fifty feet road from San Pedro valley
"to Tombstone bears north north-east and south southwest.

"Twenty four thousand nine hundred and ten feet, gully six feet
"deep, twenty feet wide, course west.

"Twenty five thousand one hundred feet, gully ten feet deep,
"thirty feet wide, course west.

"Twenty-five thousand two hundred and ninety feet, road east and
"west.

"Twenty-six thousand four hundred feet set a lime stone twenty-
"two by ten by ten inches, fifteen and one half inches in the ground,
"for five mile corner, marked S. J. B. N. 5 M. on west face and P. L.
"on east face, with pits and mound of earth.

"Twenty-seven thousand two hundred eighty six and twenty-one
"hundredths feet set a lime stone twenty by twelve by ten inches,
"fifteen inches in the ground for angle corner No. two, marked
"S. J. B. N. △ 2 on the west face and P. L. on east face with pits
"and mound of earth. This point is on the north slope of a mesa
"near a narrow wash, no bearings available. Thence north one de-
"gree and fifty-eight minutes east.

"One thousand seven hundred fifty three and seventy nine hun-
"dredths feet set a granite stone twenty by twelve by ten
39 "inches, fifteen inches in the ground, for five and one half
"mile corner, marked S. J. B. N. 5½ M. on west face and P. L.
"on east face, with pits and mound of earth.

"Three thousand seven hundred feet, enter flat, course west.

"Four thousand feet leave flat and ascend soft sand stone hills.

"Four thousand three hundred ninety-three and seventy-nine
"hundredths feet set a sand stone twenty-four by eighteen by five
"inches, eighteen inches in the ground for six mile corner, marked
"S. J. B. N. 6 M. on west face and P. L. on east face, with pits and
"mound of earth.

"Five thousand nine hundred and ninety-five feet summit of a
"high ridge bears east and west.

"Seven thousand thirty-three and seventy-nine hundredths feet
"set a sandstone twenty by ten by ten inches, fifteen inches in the
"ground for six and one-half mile corner, marked S. J. B. N. 6½ M.
"on west face and P. L. on east face with pits and mound of earth.

"Whetstone peak (sharp) bears north eighty-six degrees and ten
"minutes west.

"Seven thousand seven hundred feet, summit or a high ridge
"bears east and west.

"Seven thousand nine hundred and forty feet enter broad flat,
"bears east and west.

"Nine thousand four hundred and seventeen feet, wash *on* hun-
"dred feet wide, course west.
40 "Nine thousand six hundred seventy-three and seventy-
"nine hundredths feet set a granite stone twenty-four by
"fourteen by ten inches, eighteen inches in the ground for seven
"mile corner, marked S. J. B. N. 7 M. on west face and P. L. on east
"face with pits and mound of earth.

"Twelve thousand three hundred thirteen and seventy-nine hun-
"dredths feet set a lime stone twenty by thirteen by eight inches in
"the ground for seven and one half mile corner, marked S. J. B. N.
"7½ M. on west face and P. L. on east face, with pits and mound of
"earth.

"Twelve thousand six hundred fifty-five and thirty-eight hun-
"dredths feet set a limestone twenty by fourteen by ten inches, fif-
"teen inches in the ground for angle corner No. three and the north
"east corner of this grant marked S. J. B. N. △ 3 on southwest face
"and P. L. on northeast face, pits and mound of earth. From this
"corner Rincon peak bears north forty-three degrees and twenty-
"two minutes west. Whetstone peak bears north eighty-nine de-
"grees and twenty minutes west.

"Butte at center of Cochise Stronghold bears north fifty-nine de-
"grees and thirty-seven minutes east. Huachuca peak No. 3 bears
"south ten and one-half degrees west. S. Curtis' house bears south
"forty-two degrees and twenty-two minutes west about one half
"mile.

"North boundary.

"Thence north eighty-eight degrees and two minutes west,
41 "two hundred and nineteen feet, wire fence of Joseph Curtis'
"field north and south.

"Three hundred and eighteen feet, a row of cottonwood trees
"north and south.

"Four hundred and forty feet, school house San Pedro district
"about twenty-five feet north.

"Five hundred feet, residence of Joseph Curtis, about one hun-
"dred and twenty five feet north.

"Seven hundred feet, Joseph Curtis' barn, about two hundred
"and fifty feet north.

"Eight hundred and fifteen feet, row of cottonwood trees north
"and south.

"Two thousand two hundred and two feet, wire fence bears north
"and south.

"Two thousand two hundred ninety eight and forty one hun-
"dredths feet set a volcanic stone twenty by twelve by ten inches,
"fifteen inches in the ground for eight mile corner, marked
"S. J. B. N. 8 M. on south face and P. L. on north face, with pits
"and mound of earth.

"Two thousand four hundred and sixty two feet, country road
"north and south.

"Two thousand seven hundred and eighty eight feet, old road "north and south.

"Four thousand eight hundred and forty feet, irrigation ditch "six feet wide, course north.

42 "Four thousand nine hundred feet set a granite stone "twenty by twelve by six inches, fifteen inches in the ground "for witness corner for eight and one half mile corner as said eight "and one half mile corner falls in a bottom, subject to over flow; "said stone is marked S. J. B. N. 8½ M. on south face and P. L. on "north face; also marked W. C. with pits and mound of earth.

"A mesquite tree four inches in diameter bears south two degrees "east, twelve feet, marked S. J. B. N. 8½ M. B. T.

"Four thousand nine hundred and twelve feet bank of San Pedro "river, twenty feet high bears south southwest and north north-"east.

"Five thousand six hundred and forty feet, middle of San Pedro "river, twenty feet wide, course north northeast.

"Five thousand seven hundred and six feet west bank of river, "south southwest and north northeast.

"Six thousand one hundred and eighty feet, center of track of "New Mexico and Arizona railroad, north and south.

"Seven thousand five hundred seventy eight and forty one hun-"dredths feet, set a granite stone twenty-two by twelve by six "inches, sixteen inches in the ground, for nine mile corner, marked "S. J. B. N. 9 M. on south face and P. L. on north face, with pits "and mound of earth.

"Eight thousand and five feet, center of track of Arizona and "South Eastern railroad bears south sixteen and one half degrees "east.

43 "Eight thousand and fifty six feet telegraph line, same "course.

"Eight thousand four hundred and sixty feet, valley road north "and south.

"Ten thousand ninety and eight tenths feet set a limestone twenty-"two by ten by ten inches, sixteen inches in the ground, for angle "corner No. four; the northwest corner of this grant marked S. J. "B. N. △ 4 on the southeast face and P. L. on the northwest face "with pits and mound of earth. Rincon peak bears north forty "degrees and twenty seven minutes west. Whetstone peak bears "south eighty-nine degrees and fifty seven minutes west. Cochise "butte bears north sixty-three degrees and ten minutes east.

"West boundary.

"Thence from angle corner No. four south one degree and fifty-"eight minutes west.

"One hundred and twenty-seven and sixty-one hundredths feet "set a limestone twenty by twelve by ten inches, fifteen inches in "the ground for nine and one half mile corner marked S. J. B. N.

"9½ M. on east face and P. L. on west face with pits and mound of
"earth.
"Nine hundred feet ascend steep ridge.
"One thousand two hundred feet, summit of ridge west and east.
"One thousand nine hundred feet.
"Two thousand seven hundred sixty seven and sixty-one hun-
"dredths feet set a granite stone twenty by fourteen by ten
44 "inches, fifteen inches in the ground, for ten mile corner
"marked S. J. B. N. 10 M. on east face and P. L. on west face,
"with pits and mound of earth.
"Three thousand three hundred and fifty feet, summit of sharp
"ridge west and east.
"Five thousand four hundred seven and sixty-one hundredths
"feet, set a granite stone twenty-one by fourteen by seven inches,
"fifteen inches in the ground for ten and one-half mile corner,
"marked S. J. B. N. 10½ M. on east face and P. L. on west face, with
"pits and mound of earth.
"Seven thousand nine hundred feet enter broad flat known as the
"Jim land.
"Eight thousand forty-seven and sixty-one hundredths feet, set a
"granite stone twenty by ten by ten inches fifteen inches in the
"ground for eleven mile corner, marked S. J. B. N. 11 M. on the
"east face and P. L. on the west face, with pits and mound of earth.
"Ten thousand six hundred eighty seven and sixty-one hun-
"dredths feet set a white limestone twenty two by fourteen by
"twelve, fifteen and one half inches in the ground for eleven and
"one-half mile corner, marked S. J. B. N. 11½ M. on the east face
"and P. L. on west face, with pits and mound of earth. Whetstone
"peak bears north eighty-one degrees and twelve minutes west.
"Cochise butte bears north fifty-seven degrees and twenty-six
"minutes east.
45 "Thirteen thousand three hundred twenty-seven and sixty-
"one hundredths feet set a limestone twenty-four by sixteen
"by eight inches, eighteen inches in the ground for twelve mile
"corner, marked S. J. B. N. 12 M. on east face and P. L. on west
"face with pits and mound of earth.
"Fourteen thousand two hundred one and thirty-eight hundredths
"feet set a volcanic stone twenty-four by twelve by ten inches, eigh-
"teen inches in the ground for angle corner No. five, marked S. J. B. N.
"△ 5 on the east face and P. L. on west face, with pits and mound
"of earth.
"Court house staff, Tombstone, bears south sixty-one degrees and
"eleven minutes east. Cochise butte bears north fifty-five degrees
"and forty-four minutes east. Huachuca peak No. one bears south
"twenty-three degrees and twenty-three minutes west and Hua-
"chuca peak No. three bears south seven degrees and thirty minutes
"west. Hill's ranch house bears north seventy-three degrees and
"twenty minutes east.

"From angle corner No. five south fifteen degrees and thirty-nine "minutes east.

"One thousand seven hundred sixty-six and twenty-three hun- "dredths feet set a limestone twenty-five by ten by eight inches, "eighteen and one-half inches in the ground for twelve and one "half mile corner, marked S. J. B. N. 12½ M. on east face and P. L. "on west face, with pits and mound of earth.

"Three thousand seven hundred feet, Whetstone road bears
46 "west northwest and east southeast.

"Four thousand four hundred six and twenty-three hun- "dredths feet set a limestone twenty-three by ten by nine inches, "eighteen inches in the ground for thirteen mile corner, marked "S. J. B. N. 13 M. on east face and P. L. on west face, with pits and "mound of earth.

"Seven thousand forty six and twenty-three hundredths feet set a "limestone twenty by ten by ten inches, fifteen inches in the ground "for thirteen and one half mile corner, marked S. J. B. N. 13½ M. "on the east face and P. L. on west face, with pits and mound of "earth.

"South stack of Contention mill bears south eighty and one quar- "ter degrees east, one and one third miles. Whetstone peak bears "north seventy-two degrees and forty minutes west.

"Nine thousand six hundred eighty six and twenty-three hun- "dredths feet set a limestone twenty-four by ten by nine inches, "eighteen inches in the ground for fourteen mile corner, marked "S. J. B. N. 14 M. on the east face and P. L. on west face, with pits "and mound of earth, courthouse, Tombstone, bears south sixty- "nine degrees east.

"Ajax peak bears south fifty-five degrees and twenty minutes "east.

"Twelve thousand three hundred twenty six and twenty-three "hundredths feet set a granite stone eighteen by ten by nine inches,

"fourteen inches in the ground for fourteen and one
47 "half mile corner, marked S. J. B. N. 14½ M. on east face

"and P. L. on west face, with pits and mound of earth north, "north peak of Ajax hills (not Ajax peak) bears south sixty-eight "and one quarter degrees east.

"Whetstone peak bears north seventy degrees west.

"Thirteen thousand five hundred and seventy-two feet, road west "and east.

"Fourteen thousand nine hundred seventy-six and twenty-three "hundredths feet set a granite stone twenty by twelve by eight "inches, fifteen inches in the ground for fifteen mile corner, marked "S. J. B. N. 15 M. on east face and P. L. on west face, with pits and "mound of earth.

"Fifteen thousand one hundred and twenty feet, old road west "and east.

"Seventeen thousand six hundred six and twenty-three hun- "dredths feet set a limestone twenty-two by ten by eight inches,

" fifteen and one half inches in the ground for fifteen and one half " mile corner, marked "S. J. B. N 15½ M. on east face and P. L. on " west face, with pits and mound of earth.

" Eighteen thousand three hundred and fifty feet, road from Baba- " comari to Contention west and east.

" Twenty thousand two hundred forty-six and twenty-three hun- " dredths feet set a porphyry stone twenty-six by ten by eight inches, " twenty inches in the ground for sixteen mile corner, marked S. J.
" B. N. 16 M. on east face and P. L. on west face, with pits
48 " and mound of earth.

" Whetstone peak bears north sixty-four degrees west. " Huachucha peak No. three bears north ten degrees west.

" Twenty two thousand eight hundred eighty-six and twenty-three " hundredths feet, set a granite stone twenty-six by twelve by eight " inches, 20 inches in the ground for sixteen and one half mile " corner, marked S. J. B. N. 16½ M. on east face and P. L. on west " face, with pits and mound of earth. Rocky summit of Conical " hill bears north eighty-four and one half degrees east about " one thousand feet. Mustang peak bears north eighty-eight degrees " west.

" Twenty-five thousand feet wash, course west.

" Twenty-five thousand three hundred and seventy-six feet, road, " Fairbank to Fort Huachucha west and east.

" Twenty five thousand five hundred twenty-six and twenty-three " hundredths feet, set a granite stone, twenty-six by twelve by eight " inches, twenty inches in the ground, for seventeen mile corner, " marked S. J. B. N. 17 M. on the east face and P. L. on the west " face, with pits and mound of earth. Grand Central mill bears " north thirty nine and one half degrees east. Huachucha peak " No. one bears south thirty-two degrees and thirty-four minutes " west.

" Twenty-seven thousand eight hundred and fifty feet, deep gulch, " twenty ft. wide, northwest and southeast.

" Twenty eight thousand one hundred sixty six and twenty-
49 " three hundredths feet set a granite stone twenty-six by ten by " eight inches, twenty inches in the ground, for seventeen and " one half mile corner, marked S. J. B. N. 17½ M. on east face and " P. L. on west face with mound of stone west of corner.

" Twenty-eight thousand three hundred thirty-nine and seventy- " nine hundredths feet set a granite stone twenty-two by ten by " ten inches fifteen and one half inches in the ground, for angle " corner No. six, marked S. J. B. N. △ 6 on east and P. L. on west " face with a mound of stone west of corner close to the north edge " of a wash. Ajax peak bears south eighty-six and one quarter de- " grees east about six miles.

" Thence south ten degrees and two minutes east.

" Ten feet, center of wash, four feet wide, course west and east.

" Three hundred and sixty feet, center of flat, one hundred feet " wide, west and east.

"One thousand three hundred and ninety one feet, telegraph line,
"west and east.
"One thousand three hundred and twenty-six feet center of tract
"west and east.
"One thousand seven hundred and fifty feet, Babacomari creek
"eight feet wide course east.
"Two thousand three hundred and eighty feet, John Giphart's
"ranch house, about five hundred feet east.
"Two thousand four hundred sixty six and forty-four hundredths
" feet set a granite stone twenty-four by eleven by nine inches,
50 "eighteen inches in the ground, for eighteen mile corner,
" marked S. J. B. N. 18 M. on east face and P. L. on west face,
"with mound of stone west of corner.
"Three thousand seven hundred feet, break of a brushy mesa.
"Five thousand one hundred six and forty-four hundredths feet,
"set a granite stone twenty by twelve by twelve inches, fifteen
"inches in the ground, for eighteen and one half mile corner,
"marked S. J. B. N. 18½ M. on east face and P. L. on west face,
"with pits on line north and south of corner three feet distant.
"Seven thousand five hundred and fifty feet, descend from mesa
"break bears northeast and southwest.
"Seven thousand seven hundred feet, enter flat extending several
"miles.
"Seven thousand seven hundred forty-six and forty-four hun-
"dredths feet, set a granite stone twenty-six by twelve by eighteen
"inches, twenty inches in the ground, for nineteen mile corner,
"marked S. J. B. N. 19 M. on east face and P. L. on west face, with
"pits and mound of stone. Huachucha peak No. one bears south
"thirty-seven degrees west. Huachucha peak No. two bears south
"fourteen degrees and twelve minutes west.
"Seven thousand seven hundred and sixty two feet, road south-
"west and northeast.
"Seven thousand seven hundred and seventy-nine feet, wire fence,
"north boundary of Peter Crane's pasture.
"Ten thousand two hundred and twenty-four feet, wire
51 "fence south boundary of Crane's pasture.
"Crane's house bears north-east about five hundred feet.
"Ten thousand three hundred eighty six and forty four hundredths
"feet, set a volcanic stone twenty by fourteen by ten inches, fifteen
"inches in the ground, for nineteen and one half mile corner,
"marked S. J. B. N. 19½ M. on east face and P. L. on west face, with
"pits and mound of earth.
"Eleven thousand and fifty-four feet, road southwest and north
"east.
"Thirteen thousand twenty-six and forty-four hundredths feet
"set a volcanic stone twenty-four by eighteen by six inches, eighteen
"inches in the ground for twenty mile corner, marked S. J. B. N. 20
"M. on east face and P. L. on west face, with pits and mound of
"earth.

"Fifteen thousand six hundred sixty-six and forty-four hun-
" dredths feet, set a granite stone thirty by twelve by six inches,
" twenty-three inches in the ground for twenty and one half mile
" corner, marked S. J. B. N. 20½ M. on east face and P. L. on west
" face, with pits and mound of earth. Huachucha peak No. one
" bears south twenty-five degrees and fifty-five minutes west.
" Huachucha peak No. three bears south sixteen degrees west.

"Eighteen thousand three hundred six and forty-four hundredths
" feet — a granite stone twenty-one by thirteen by nine inches, fifteen
" and one half inches in the ground for twenty-one mile corner,
52 " marked S. J. B. N. 21 M. on east face and P. L on west face,
" with pits and mound of earth. Huachucha peak No. one
" bears south forty-two degrees and twenty-four minutes west.
" Huachucha peak No. two bears south sixteen degrees and forty
" seven minutes west.

"Twenty thousand nine hundred forty-six and forty-four hun-
" dredths feet, set a granite stone twenty-four by twelve by seven
" inches, eighteen inches in the ground, for twenty one and one half
" mile corner, marked S. J. B. N. 21½ M. on the east face and P. L.
" on west face, with pits and mound of earth. Charleston peak
" bears south sixty-five and one quarter degrees east. Huachucha
" peak No. three bears south seventeen and one half degrees west.

"Twenty-three thousand five hundred eighty-six and forty-four
" hundredths feet set a granite stone twenty-four by twelve
" by seven inches, eighteen inches in the ground, for twenty-two
" mile corner, marked S. J. B. N. 22 M. on the east face and P. L.
" on west face, mound of stone west of corner. Mount Wrightson
" (Santa Ritas) bears north eighty-five degrees and ten minutes west.
" Boston mill bears north twenty-one degrees and eighteen minutes
" east.

"Twenty-six thousand two hundred twenty-six and forty-four
" hundredths feet, set a granite stone twenty-five by ten by eight
" inches, nineteen inches in the ground, for twenty-two and one half
" mile corner, marked S. J. B. N. 22½ M. on east face and
53 " P. L. on west face with pits and mound of earth. Twenty-
" eight thousand eight hundred and forty one feet cross stone
" wall of old building or enclosure, bears south seventy degrees west
" and north seventy degrees east.

"Twenty-eight thousand eight hundred and sixty-six and forty-
" four hundredths feet, set a granite stone thirty by twelve by
" twelve inches, twenty-three inches in the ground, for twenty three
" mile corner, marked S. J. B. N. and 23 M. on the east face and
" P. L. on west face, with a mound of stone west of corner.

"Old Charleston burying ground five hundred feet right of line.

"Twenty-eight thousand eight hundred and ninety one feet, cross
" south wall of old inclosure.

"Twenty-nine thousand one hundred and thirty feet, wash, four
" feet deep, six feet wide, course northeast.

"Thirty-one thousand three hundred and seventy-five feet, wash,
"six feet deep, twenty feet wide, course north east.

"Thirty one thousand five hundred six and forty-four hundredths
"feet set a sandstone twenty by fourteen by eight inches, fifteen
"inches in the ground, for twenty three and one half corner marked
"S. J. B. N. 23½ M. on east face and P. L. on west face, with pits and
"mound of earth.

"Thirty one thousand five hundred and fifty-six feet, road south-
"west and northeast.

"Thirty three thousand four hundred thirty four and twenty
"four hundredths feet, set a porphyry stone twenty-five by
54 "nine by nine inches, nineteen inches in the ground for angle
"corner No. seven, marked S. J. B. N. △ 7 on northeast
"and P. L. on southwest, with pits and mound of earth. This is
"the southwest corner of the said grant from which United States
"mineral monument Brokon Bill, bears south seventy-seven de-
"grees and eighteen minutes east. Huachucha peak No. three
"bears south twenty one degrees and two minutes west,

"South boundary.

"Thence north seventy-nine degrees and fifty-eight minutes east
"on the south boundary of this grant.

"Two hundred and forty feet, road north and south.

"Seven hundred twelve and two-tenths feet, set a volcanic stone
"twenty-six by eighteen by five inches, twenty inches in the ground,
"for twenty-four mile corner, marked S. J. B. N. 24 M. on north
"face and P. L. on south face, with pits and mound of earth.

"Two thousand eight hundred and two feet, road northeast and
"southwest.

"Three thousand one hundred and fifty feet, Valley road, north
"and south.

"Three thousand three hundred twenty-eight and two tenths
"feet, set a granite stone twenty-four by eighteen by ten inches,
"eighteen inches in the ground, for witness corner, marked S. J. B.
"N. 24½ M. on the north face and P. L. on the south face and W. C.
"on west face with pits and mound of earth.
55 "This stone is placed at this point for the reason that the
"point for twenty four and one half mile corner falls in a
"wash.

"Three thousand three hundred and sixty-three feet, center of
"wash five feet, thirty feet wide, course northeast.

"Three thousand four hundred and two feet, wire fence west
"boundary of Stark's corn field, bears north and south.

"Three thousand eight hundred and fifty feet, Stark's ranch
"house about three hundred feet south.

"Four thousand five hundred and seventy-seven feet, wire fence,
"east boundary of field.

"Four thousand six hundred feet, center of San Pedro river, 10
"feet wide course north.

"Four thousand seven hundred and seventy seven feet, wire fence "Arizona and South Eastern railroad.

"Four thousand eight hundred and thirty-two feet, center of "Arizona and Southeastern R. R. track on a curve northeast and "southwest.

"Four thousand eight hundred and eighty feet telegraph line "northeast and southwest.

"Four thousand eight hundred and ninety feet, fence east bound- "ary northeast and southwest.

"Four thousand nine hundred and twenty feet road north and "south.

"Five thousand nine hundred ninety two and two tenths feet, set "a porphyry stone twenty four by twelve by eight inches, eighteen
"inches in the ground, for twenty-five mile corner, marked
56 "S. J. B. N. 25 M. on north face and P. L. on south face, with
"a mound of stone west of corner. Stack of Corbin mill
'bears north eight degrees and thirty-five minutes west, about one
'half mile.

"Eight thousand one hundred and thirty-two feet, shaft four feet "deep, five feet right of line.

"Eight thousand three hundred and five feet, variation, of needle 'sixteen degrees and twenty minutes east.

"Eight thousand six hundred thirty two and two tenths feet, set "a porphyry stone twenty by twelve by ten inches, fifteen inches in "the ground for twenty-five and one half mile corner, marked "S. J. B. N. 25½ M. on north face and P. L. on south face, with "mound of stone north of corner.

"Nine thousand one hundred and twenty-one feet, variation of "needle nine degrees and fifty minutes east.

"Ten thousand ninety and eight tenths feet set a porphyry stone "twenty by sixteen by eight inches, fifteen inches in the ground, for "angle corner No. eight, and the southeast corner of this grant, "marked S. J. B. N. △ 8 on northwest face and P. L. on southeast "face, with pits and mound of earth, no bearings available.

"East boundary.

"Thence north ten degrees and two minutes west on the east "boundary of this grant.

"One hundred and twelve feet United States mineral monu-
57 "ment Bronkon hill bears south three degrees and fifty six
"minutes west. Site of old hoisting engine. Bradshaw mine
"bears north forty nine degrees and twelve minutes east, eight
"hundred and eleven feet.

"One hundred and seventy feet, old shaft filled up six feet right "of line.

"One thousand one hundred eighty one and four tenths feet, set "a porphyry stone twenty-six by ten by nine inches, nineteen and "one half inches in the ground, for twenty-six mile corner, marked

"S. J. B. N. 26 M. on west face and P. L. on east face, with a mound "of stone west of corner.

"One thousand six hundred and ninety one feet, shaft (old) fifty "feet right of line.

"Two thousand four hundred and eighty feet wash twenty feet "wide, course west.

"Three thousand feet ridge east and west, covered with old min- "ing work.

"Three thousand five hundred and eighty feet, gulch fifty feet "wide, course west. Adobe walls of old Bronkon house about five "hundred feet east.

"Three thousand eight hundred fifteen and four tenths feet set a "quartz stone twenty by sixteen by seven inches, ten inches in the "ground to bed rock for witness corner to twenty six and one half "mile corner, marked S. J. B. N. 26½ M. on west face and P. L. on
"east face, also W. C. on north face mound of stone west of
58 "corner.

"This witness corner is set for the reason that the half mile "corner falls upon a ledge of rock which is so decomposed that it "cannot be legibly marked by a cold chisel. Said corner is within "the boundaries of the old Bronkon mine, now being worked and "known as 'Dean Richmond' mine.

"Four thousand three hundred and forty feet, Tombstone and "Charleston road east and west.

"Six thousand four hundred sixty one and four tenths feet, set a "cement rock twenty by twelve by ten inches, fifteen inches in the "ground for twenty seven mile corner, marked S. J. B. N. 27 M. on "west face and P. L. on east face, with pits and mound of earth. "The corner of sections thirty five and thirty-six, township twenty "south range twenty-one east on fourth standard south bears south "forty degrees and fifty eight minutes west, one thousand one hun- "dred and twenty five feet, which is a granite rock nine by three "inches, seven inches above ground, marked S. C. on north face, "one notch on east face and five notches on west face.

"Seven thousand and sixty feet, wash ten feet wide, course north- "west.

"Seven thousand nine hundred and thirty six feet, road from "San Pedro valley to Bisbee, southeast and northwest.

"Nine thousand one hundred one and four tenths feet, set a granite
"stone, twenty by eighteen by six inches, fifteen inches in the
59 "ground, for twenty seven and one half mile corner, marked
"S. J. B. N. 27½ M. on west face and P. L. on east face, with "pits and mound of earth.

"Eleven thousand seven hundred forty one and four tenths feet, "set a granite stone twenty four by eighteen by six inches, eighteen "inches in the ground, for twenty-eight mile corner, marked S. J. B. N. "28 M. on west face and P. L. on east face, with a mound of stone "west of corner. Whetstone peak bears north fifty-four degrees and

" four minutes west. Rincon peak bears north thirty three degrees
" and forty minutes west.

" Fourteen thousand three hundred eight one and four tenths feet,
" set a granite stone twenty four by sixteen by eight inches, eighteen
" inches in the ground, for twenty eight and one half mile corner,
" marked S. J. B. N. 28½ M. on west face and P. L. on east face, with
" pits and mound of earth.

" Seventeen thousand twenty one and four tenths feet, set a gran-
" ite stone twenty four by twelve by nine inches, eighteen inches in
" the ground, for twenty nine mile corner, marked S. J. B. N. 29 M.
" on " west face and P. L. on east face with pits and mound of
" earth.

" Huachucha peak No. 3 bears south twenty one degrees west.
" Mount Wrightson (Santa Ritas) bears north eighty seven and three
" fourths degrees west.

" Eighteen thousand eight hundred and sixty eight feet, road from
" Tombstone to Boston mill southeast and northwest.

60 " Nineteen thousand six hundred sixty one and four tenths
" feet, set a granite stone twenty by twelve by twelve inches,
" fifteen inches in the ground, for twenty-nine and one half mile
" corner, marked S. J. B. N. 29½ M. on west face and P. L. on east
" face, with pits and mound of earth.

" Twenty one thousand and fifty feet, wash one hundred feet wide,
" course northwest.

" Twenty two thousand three hundred one and four tenths feet,
" set a granite stone twenty four by fifteen by ten inches, eighteen
" inches in the ground, for thirty mile corner, marked S. J. B. N.
" 30 M. on west face and P. L. on east face with pits and mound of
" earth.

" Rincon peak bears north thirty four degrees and fifty six min-
" utes west. Huachucha peak No. three bears south nineteen de-
" grees and thirty five minutes west.

" Twenty four thousand nine hundred forty one and four tenths
" feet, set a granite stone twenty two by ten by ten, fifteen and one
" half inches in the ground, for thirty and one half mile corner,
" marked S. J. B. N. 30½ M. on west face and P. L. on east face, with
" mound of stone west of corner. Ajax peak bears out north sixty
" nine and one quarter degrees east. San José peak bears south
" thirty nine degrees and thirty five minutes east.

" Twenty six thousand four hundred and sixty one feet telegraph
" pole Arizona and South Eastern Railroad station, Fairbank,

61 " bears north twenty eight degrees and twenty eight minutes
" west. A. L. Noyes' ranch house bears south sixty two degrees
" and thirty eight minutes west. Depot New Mexico and Arizona
" railroad, Fairbank, bears north thirty three degrees and five min-
" utes west.

" Twenty seven thousand five hundred eighty one and four tenths
" feet, set a porphyry stone twenty by eighteen by ten inches, fifteen
" inches in the ground, for thirty one mile corner, marked S. J. B.

"N. 31 M. on west face and P. L. on east face, with pits and mound "of earth. P. Crane's ranch house bears south fifty six degrees and "five minutes west. Noyes' bears south forty three degrees and "forty minutes west. F. M. Likes' bears north eighty six degrees "and fifteen minutes west.

"Twenty eight thousand feet, wash one hundred feet wide, course "west.

"Thirty thousand and two hundred twenty one and four tenths "feet, set a granite stone twenty by twelve by twelve inches, fifteen "inches in the ground, for thirty one and one half mile corner "marked S. J. B. N. 31½ M. on west face and P. L. on east face, with "mound of stone west of corner.

"Thirty two thousand and twenty five feet, wash one hundred and "fifty feet wide, course west.

"Thirty two thousand eight hundred sixty one and four tenths "feet, set a granite stone twenty one by eighteen by eight inches,

"fifteen and one half inches in the ground, for thirty two

62 "mile corner, marked S. J. B. N. 32 M. on west face and P. L.

"on east face with pits and mound of earth. Likes' ranch "house bears south forty and one half degrees west. Huachucha "peak No. three bears south seventeen degrees and seventeen min-"utes west.

"Thirty three thousand five hundred and sixty feet, flat one hun-"dred feet wide, east and west.

"Thirty three thousand nine hundred twenty eight and seven "tenths feet, strike a point two and three tenths feet east of angle "corner No. one, or the place of beginning, the closing error being "but two feet.

"The said grant is situated in townships eighteen, nineteen, twenty "and twenty one south range twenty one east of the Gila and Salt "River meridian, in the county of Cochise, Territory of Arizona, and "contains an area of seventeen thousand three hundred fifty five "and eighty six hundredths acres.

"In witness whereof I have hereunto set my hand and signed my "name officially at my office in the city of Tucson, in the Territory "of Arizona this 9th day of November, in the year of our Lord, "one thousand nine hundred.

"GEORGE CHRIST,

"U. S. Surveyor General for the Territory of Arizona."

And whereas there has been deposited in the General Land

63 Office duplicate certificate of deposit No. 1637 of the Central National Bank of Washington City, dated Nov. 28, 1900, whereby it appears that the sum of one hundred and seventy-seven dollars and sixty six cents has been deposited to the credit of the Treasurer of the United States on account of the surveying and platting of said grant, which said sum is one half of the cost of such surveying and platting.

Now know ye, that in consideration of the premises, and in ac-

cordance with the provisions of the aforesaid act of the third day of March one thousand eight hundred and ninety one, and the decree of the Court of Private Land Claims hereinbefore recited, the United States of America has given and granted and by these presents does give and grant unto the said Ygnacio Elias Gonzales and Nepumoceno Felix and to their heirs, successors in interest and assigns, the tract of land described in the foregoing survey, but with the following stipulations, to-wit:

First. That this patent shall operate only as a release on the part of the United States to all lands within the exterior boundaries of said grant.

Second. That this patent shall not operate to affect or conclude any conflicting private interests and rights to the lands within the grant so confirmed.

Third. That this patent shall not confer any right or title to any gold, silver or quick silver, mines or minerals of the same,
64 within the boundaries of said grant, but all such mines and minerals shall remain the property of the United States with the right of working the same.

Fourth. That this patent shall have no effect as against the title of any lands within said grant which have been heretofore granted, sold or disposed of by the United States but all of such lands are excepted from the operation thereof.

Fifth. That this patent shall not operate so as to interfere with or overthrow any just and unextinguished Indian title or rights to any lands within the boundaries of said grant.

To have and to hold the said tract of land with the appurtenances thereunto belonging unto the said Ygnacio Elias Gonzales and Nepumoceno Felix and to their heirs, successors in interest and assigns forever with the stipulations as aforesaid.

In testimony whereof I, William McKinley, President of the United States of America, have caused these letters to be made patent and the seal of the General Land Office to be hereunto affixed.

Given under my hand at the city of Washington this fourteenth day of December in the year of our Lord one thousand nine hundred, and of the Independence of the United States the one hundred and twenty-fifth.

By the President,

WILLIAM McKINLEY.

[SEAL.] By F. M McKEAN, Secretary.

C. H. BURSH,
Recorder of the General Land Office.

65 Rec. vol. 28, pp. 55 to 85 inclusive.

Filed and recorded at request of W. C. Land, Jan. 18th, A. D., 1901, at 1 p. m. FRANK HARE,
County Recorder.

Book 14 Deeds of Real Estate, pages 280 to 299 inclusive.

TERRITORY OF ARIZONA, Cochise County, } ss:

I, Frank Hare, county recorder in and for said county, do hereby certify that the foregoing twenty-seven (27) pages *is* a full, true and correct copy of the instrument of record in my office, in Book 14 of Deeds of Real Estate, pages 280 to 299, inclusive.

In witness whereof I have hereunto set my hand and the seal of my office, this 6th day of August, 1901.

FRANK HARE,
County Recorder.

[SEAL.]

(Endorsed:) No. 2232. Cert. copy of Plaintiffs' Ex. 1. Certified copy of patent. Filed in lieu of original July 1st, 1902. Geo. B. Wilcox, clerk. No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al. vs.* Boquillas Land & Cattle Co. Certified copy of patent. Filed August 21, 1902, James Allen Cox, clerk. By Angie B. Parker, deputy.

66 This plat of the preliminary survey of the "San Juan de las Boquillas y Nogales" private land claim, situated on the San Pedro river, Cochise county, Arizona, is strictly conformable to the field notes of the survey thereof on file in this office, which have been examined and approved.

JOHN WASSON,
Surveyor General.

Surveyor general's office, Tucson, Arizona, April 27, 1881.

Office of U. S. Surveyor General, Phœnix, Arizona.

I, Hugh H. Price, U. S. surveyor general for the district of Arizona, do hereby certify that the above and foregoing is a full, true and correct copy of what it purports to be a transcript of on file in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal, this tenth day of May, A. D., 1902.

HUGH H. PRICE,
U. S. Surveyor General for Arizona.

[SEAL.]

(Endorsed:) D. E. 2. 2232. Filed June 6, 1902. Geo. B. Wilcox, clerk. No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al. vs.* Boquillas Land & Cattle Co. Def'ts' Ex. 2. Filed August 21, 1902. James Allen Cox, clerk. By Angie B. Parker, deputy.

67 U. S. Surveyor General's Office.

TUCSON, ARIZONA, April 26, 1881.

The foregoing field notes of the preliminary survey of the exterior boundaries of the San Juan de las Boquillas y Nogales private land

claim, Cachise county, Arizona, executed by Solon M. Allis, D. S., under his contract of the first day of February, 1881, having been critically examined and the necessary corrections and explanations made, the said field notes and the surveys they describe, are hereby approved.

JOHN WASSON,
Surveyor General.

Office of U. S. Surveyor General.

PHŒNIX, ARIZONA, May 10, 1902.

I, Hugh H. Price, U. S. surveyor general for the district of Arizona, do hereby certify that the above and foregoing is a full, true and correct copy of what it purports to be a transcript of on file in this office.

In witness whereof, I have hereunto set my hand and affixed my official seal, this tenth day of April, A. D., 1902.

HUGH H. PRICE,
[SEAL.] U. S. Surveyor General for Arizona.

(Endorsed:) 2232. D. E. 3. Filed June 5, 1902. Geo. B. Wilcox, clerk. No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al. vs.* Boquillas Land & Cattle Co. Def'ts' Ex. 3. Filed August 21, 1902. James Allen Cox, clerk. By Angie B. Parker, deputy.

68 This indenture, made this 3rd day of July, A. D. nineteen hundred and one, by and between Phebe A. Hearst (widow) of the county of Alameda, State of California, and William R. Hearst (unmarried), of the city and county of New York, State of New York, acting herein by Edward H. Clark, of the same place, his attorney in fact, parties of the first part, and the Boquillas Land and Cattle Company, a corporation organized and existing under the laws of the State of California, and having its principal place of business in the city and county of San Francisco in said State, party of the second part,

Witnesseth: That the parties of the first part, for and in consideration of the sum of ten ($10.00) dollars, to them in hand paid by the party of the second part, have granted, sold and conveyed, and by these presents do grant, sell and convey unto the said Boquillas Land and Cattle Company all that certain piece and parcel of land situate in the county of Cochise and Territory of Arizona, and known as the Rancho San Juan de las Boquillas y Nogales, as the same was confirmed in the United States court of private land claims by decree entered therein on the fourteenth day of February, A. D. 1899, in the cause therein entitled W. R. Hearst and Phebe A. Hearst, plaintiffs, *versus* The United States, *et al.* defendants, No. 42, and as

more particularly described in the letters patent issued by the United States of America on December 14, A. D. 1900, pursuant to
69 said decree of confirmation and the approved survey of said rancho, made thereunder, in words and figures following, to-wit:

Descriptive notes of the survey of the San Juan de Las Boquillas Y Nogales private land grant.

Proceed to point five thousand and fifty-one and four tenths feet north seventy-seven degrees ten minutes east of the initial point where is established angle corner No. 1 and the beginning corner of this grant.

A granite stone twenty by twenty by ten inches, fifteen inches in the ground marked S. J. B. N. △ 1 on west face and P. L. on east face with pits north fifteen degrees and thirty-nine minutes west and south ten degrees and two minutes east and mound of stone south of corner.

A telegraph pole of the Arizona and Southeastern Railroad station in the town of Fairbank bears north seventy degrees and forty-nine minutes west about one half of a mile. Rincon peak bears north thirty-one degrees and thirty-nine minutes west. Huachucha peak No. 1 bears south thirty-seven degrees and twenty minutes west. Said beginning corner is on the east boundary of this grant and is in latitude thirty-one degrees forty-two minutes thirty seconds north longitude one hundred and ten degrees eight minutes and forty-two seconds west.

Northern portion of east boundary, magnetic variation twelve degrees and thirty minutes east.

From the beginning corner just described, thence north
70 fifteen degrees and thirty-nine minutes west. Five hundred and ninety-four feet, road bears northeast and southwest. Eight hundred and sixty feet, wash, one hundred and fifty feet wide, course west.

One thousand two hundred and fifty-two feet, road from Tombstone to Fairbank east and west.

One thousand four hundred and sixty-six feet, telegraph line between same points east and west.

One thousand six hundred and fifty feet, wash, fifty feet wide, course west.

Two thousand six hundred feet begin ascent of ridge east and west.

Two thousand six hundred and forty feet set a granite stone twenty-one by ten inches, fifteen and one-half inches in the ground for one-half mile corner, marked S. J. B. N. ½ M. on the west face and P. L. on east face with pits and mound of earth.

Five thousand two hundred and eighty feet set a granite stone twenty by ten by ten inches, fifteen inches in the ground for one mile corner, marked S. J. B. N. 1 M. on west face and P. L. on east face, with pits and mound of earth.

Seven thousand nine hundred and twenty feet set a porphyry stone twenty by thirteen by nine inches, fifteen inches in the ground for one and one-half mile corner, marked S. J. B. N. 1½ M. on west face and P. L. on east face, with pits and mound of earth.

71 Eight thousand four hundred feet, road from Tombstone to Grand Central mill bears northeast and southwest.

Nine thousand two hundred feet Grand Central dwelling house about one-half mile west.

Ten thousand five hundred and sixty feet set a granite stone thirty by ten by eight inches, twenty-three inches in the ground for two mile corner marked S. J. B. N. 2 M. on west face and P. L. on east face, with pits and mound of earth.

Eleven thousand three hundred and fifty feet, center of wash, two hundred feet wide, course west.

Eleven thousand four hundred and sixty feet, steep ascent from wash.

Thirteen thousand two hundred feet set limestone thirty by fourteen by eight inches, twenty-three inches in the ground for two and one-half mile corner, marked S. J. B. N. 2½ M. on west face and P. L. on east face, with pits and mound of earth.

Fifteen thousand eight hundred and forty feet set a granite stone twenty by ten by ten inches fifteen inches in the ground for three mile corner, marked S. J. B. N. 3 M. on west face and P. L. on east face, with pits and mound of earth.

Sixteen thousand six hundred and thirty feet, road from Tombstone to Contention mill bears southeast and northwest.

Seventeen thousand two hundred and fifty feet, old road between same points.

72 Eighteen thousand four hundred and eighty feet set a granite stone twenty by fifteen by nine inches, fifteen inches in the ground for three and one-half mile corner, marked S. J. B. N. 3½ M. on west face and P. L. on east, with pits and mound of earth.

Twenty-one thousand and seventy feet, leave rough ground and enter flat.

Twenty-one thousand one hundred and twenty feet set a granite stone twenty by twelve by twelve inches, fifteen inches in the ground for four mile corner, marked S. J. B. N. 4 M. on west face and P. L. on east, with pits and mound of earth.

Twenty-two thousand three hundred and twenty feet enter rolling country.

Twenty-three thousand seven hundred and sixty feet set a lime stone twenty-one by twelve by ten inches, fifteen and one-half inches in the ground for four and one-half mile corner, marked S. J. B. N.

4½ M. on west face and P. L. on east face with pits and mound of earth.

Twenty-four thousand and fifty feet road from San Pedro valley to Tombstone bears north northeast and south southwest.

Twenty-four thousand nine hundred and ten feet, gully six feet deep, twenty feet wide, course west.

Twenty-five thousand one hundred feet, gully ten feet deep, thirty feet wide, course west.

Twenty-five thousand two hundred and ninety feet road east and west.

73 Twenty-six thousand four hundred feet set a lime-stone twenty-two by ten by ten inches, fifteen and one-half inches in the ground for five mile corner, marked S. J. B. N. 5 M. on west face and P. L. on east face, with pits and mound of earth.

Twenty-seven thousand two hundred eighty-six and twenty-one hundredths feet set a limestone twenty by twelve by ten inches, fifteen inches in the ground for angle corner No. two, marked S. J. B. N. △ 2 on the west face and P. L. on east face, with pits and mound of earth. This point is on the north slope of a mesa near a narrow wash, no bearings available.

Thence north one degree and fifty-eight minutes east.

One thousand seven hundred fifty-three and seventy-nine hundredths feet set a granite stone twenty by twelve by ten inches, fifteen inches in the ground for five and one-half mile corner, marked S. J. B. N. 5½ M. on west face and P. L. on east face, with pits and mound of earth.

Three thousand seven hundred feet, enter flat, course west.

Four thousand feet leave flat and ascend soft sandstone hills.

Four thousand three hundred ninety-three and seventy-nine hundredths feet set a sandstone twenty-four by eighteen by five inches, eighteen inches in the ground for six mile corner, marked S. J. B. N. 6 M. on west face and P. L. on east face, with pits and mound of earth.

Five thousand nine hundred and ninety-five feet, summit
74 of a high ridge bears east and west.

Seven thousand thirty-three and seventy-nine hundredths feet set a sandstone twenty by ten by ten inches, fifteen inches in the ground for six and one-half mile corner, marked S. J. B. N. 6½ M. on west face and P. L. on east face, with pits and mound of earth. Whetstone *park* (sharp) bears north eighty-six degrees and ten minutes west.

Seven thousand seven hundred feet, summit of a high ridge bears east and west.

Seven thousand nine hundred and forty feet enter broad flat, bears east and west.

Nine thousand four hundred and seventeen feet, wash one hundred feet wide, course west.

Nine thousand six hundred seventy-three and seventy-nine hundredths feet set a granite stone twenty-four by fourteen by ten inches,

eighteen inches in the ground for seven mile corner, marked S. J. B. N. 7 M. on west face, and P. L. on east face, with pits and mound of earth.

Twelve thousand three hundred thirteen and seventy-nine hundredths feet set a limestone twenty by thirteen by eight inches, fifteen inches in the ground for seven and one-half mile corner, marked S. J. B. N. 7½ M. on west face and P. L. on east face, with pits and mound of earth.

Twelve thousand six hundred fifty-five and thirty-eight hundredths feet set a limestone twenty by fourteen by ten inches,
75 fifteen inches in the ground for angle corner No. three, and the northeast corner of this grant marked S. J. B. N. △ 3 on southwest face and P. L. on northeast face, pits and mounds of earth. From this corner Rincon peak bears north forty-three degrees and twenty-two minutes west. Whetstone peak bears north eighty-nine degrees and twenty minutes west.

Butte at center of Cochise stronghold bears north fifty-nine degrees and thirty-seven minutes east. Huachucha peak No. 3 bears south ten and one-half degrees west. S. Curtis' house bears south forty-two degrees and twenty-two minutes west about one-half mile.

North boundary.

Thence north eighty-eight degrees and two minutes west. Two hundred and nineteen feet wire fence of Joseph Curtis' field north and south.

Three hundred and eighteen feet, a row of cotton wood trees north and south.

Four hundred and forty feet, school house San Pedro district, about twenty-five feet north.

Five hundred feet, residence of Joseph Curtis, about one hundred and twenty-five feet north.

Seven hundred feet, Joseph Curtis' barn about two hundred and fifty feet north.

Eight hundred and fifteen feet, row of cottonwood trees north and south.

76 Two thousand two hundred and two feet, wire fence bears north and south.

Two thousand two hundred ninety-eight and forty-one hundredths feet set a volcanic stone twelve by twelve by ten inches, fifteen inches in the ground for eight mile corner, marked S. J. B. N. 8 M. on south face and P. L. on north face, with pits and mound of earth.

Two thousand four hundred and sixty-two feet, country road north and south.

Two thousand seven hundred and eighty-eight feet, old road north and south.

Four thousand eight hundred and forty feet, irrigation ditch six feet wide, course north.

Four thousand nine hundred feet set a granite stone twenty by twelve by six inches, fifteen inches in the ground for witness corner for eight and one-half mile corner as said eight and one-half mile corner falls in a bottom, subject to overflow, said stone is marked S. J. B. N. 8½ M. on south face and P. L. on north face, also marked W. C., with pits and mound of earth. A mesquite tree four inches in diameter bears south two degrees east twelve feet, marked S. J. B. N. 8½ M. B. T. Four thousand nine hundred and twelve feet bank of San Pedro river, twenty feet high bears south southwest and north northeast.

Five thousand six hundred and forty feet, middle of San Pedro river, twenty feet wide, course north northeast.

77 Five thousand seven hundred and six feet. West bank of river, south southwest and north northeast.

Six thousand one hundred and eighty feet, center of track of New Mexico and Arizona railroad, north and south.

Seven thousand five hundred and seventy-eight and forty-one hundredths feet, set a granite stone twenty-two by twelve by six inches, sixteen inches in the ground for nine mile corner, marked S. J. B. N. 9 M. on south face and P. L. on north face, with pits and mound of earth.

Eight thousand and five feet, center of track of Arizona and Southeastern railroad, bears south sixteen and one-half degrees east.

Eight thousand and fifty-six feet, telegraph line, same course.

Eight thousand four hundred and sixty feet, valley road north and south.

Ten thousand ninety and eight tenths feet, set a limestone twenty-two by ten by ten inches, sixteen inches in the ground for angle corner No. four, the northwest corner of this grant marked S. J. B. N. △ 4 on the southeast face and P. L. on the northwest face, with pits and mound of earth. Rincon peak bears north forty degrees and twenty-seven minutes west. Whetstone peak bears south eighty-nine degrees and fifty-seven minutes west. Cochise butte bears north sixty-three degrees and ten minutes east.

78 West boundary.

Thence from angle corner No. four south one degree and fifty-eight minutes west.

One hundred twenty-seven and sixty-one hundredths feet set a limestone twenty by twelve by ten inches, fifteen inches in the ground for nine and one-half mile corner marked S. J. B. N. 9½ M. on east face and P. L. on west face with pits and mound of earth.

Nine hundred feet ascend steep ridge.

One thousand two hundred feet, summit of ridge west and east.

One thousand nine hundred feet, enter flat.

Two thousand seven hundred sixty-seven and sixty-one hundredths feet set a granite stone twenty by fourteen by ten inches, fifteen inches in the ground, for ten mile corner, marked S. J. B. N.

10 M. on east face and P. L. on west face, with pits and mound o earth.

Three thousand three hundred and fifty feet, summit of sharp ridge west and east.

Five thousand four hundred seven and sixty-one hundredths feet, set a granite stone twenty-one by fourteen by seven inches, fifteen inches in the ground for ten and one-half mile corner, marked S. J. B. N. 10½ M. on east face and P. L. on west face, with pits and mound of earth.

Seven thousand nine hundred feet enter broad flat known
79 as the Jim land.

Eight thousand forty-seven and sixty-one hundredths feet set a granite stone twenty by ten by ten inches fifteen inches in the ground for eleven mile corner, marked S. J. B. N. 11 M. on the east face and P. L. on the west face, with pits and mound of earth.

Ten thousand six hundred eighty-seven and sixty-one hundredths feet set a white limestone twenty-two by fourteen by twelve inches, fifteen and one-half inches in the ground for eleven and one-half mile corner, marked S. J. B. N. 11½ M. on the east face and P. L. on west face, with pits and mound of earth. Whetstone peak bears north eighty-one degrees and twelve minutes west.

Cochise butte bears north fifty-seven degrees and twenty-six minutes east.

Thirteen thousand three hundred twenty-seven and sixty-one hundredths feet set a limestone twenty-four by sixteen by eight inches, eighteen inches in the ground for twelve mile corner, marked S. J. B. N. 12 M. on east face and P. L. on west face, with pits and mound of earth.

Fourteen thousand two hundred one and thirty-eight hundredths feet set a volcanic stone twenty-four by twelve by ten inches, eighteen inches in the ground, for angle corner No. five, marked S. J. B. N. △ 5 on the east face and P. L. on west face with pits and mound of earth. Court house staff Tombstone bears south
80 sixty-one degrees and eleven minutes east. Cochise butte bears north fifty-five degrees and forty-four minutes east. Huachucha peak No. one bears south twenty-three degrees and twenty-three minutes west and Huachucha peak No. three bears south seven degrees and thirty minutes west. Hill's ranch bears north seventy-three degrees and twenty minutes east.

From angle corner No. five south fifteen degrees and thirty-nine minutes east.

One thousand seven hundred sixty-six and twenty-three hundredths feet set a limestone twenty-five by ten by eight inches, eighteen and one-half inches in the ground for twelve and one-half mile corner, marked S. J. B. N. 12½ M. on east face and P. L. on west face, with pits and mound of earth.

Three thousand seven hundred feet, Whetstone road bears west northwest and east southeast.

Four thousand four hundred six and twenty-three hundredths

feet set a limestone twenty-three by ten by nine inches, eighteen inches in the ground for thirteen mile corner marked S. J. B. N. 13 M. on east face and P. L. on west face, with pits and mound of earth.

Seven thousand forty-six and twenty-three hundredths feet set a limestone twenty by ten by ten inches, fifteen inches in the ground for thirteen and one-half mile corner, marked S. J. B. N. 13½ M. on the east face and P. L. on west face, with pits and mound of earth,

south stack of Contention mill bears south eighty and one-
81 quarter degrees east, one and one-third miles, Whetstone peak bears north seventy-two degrees and forty minutes west.

Nine thousand six hundred eighty-six and twenty-three hundredths feet set a limestone twenty-four by ten by nine inches eighteen inches in the ground for fourteen mile corner, marked S. J. B. N. 14 M. on the east face and P. L. on west face, with pits and mound of earth. Courthouse, Tombstone, bears south sixty-nine degrees east, Ajax peak bears south fifty-five degrees and twenty minutes east.

Twelve thousand three hundred twenty-six and twenty-three hundredths feet set a granite stone eighteen by ten by nine inches, fourteen inches in the ground, for fourteen and one-half mile corner, marked S. J. B. N. 14½ M. on east face and P. L. on west face with pits and mound of earth. North peak of Ajax hills (not Ajax peak) bears south sixty-eight and one-quarter degrees east. Whetstone peak bears north seventy degrees west.

Thirteen thousand five hundred and seventy-two feet, road west and east.

Fourteen thousand nine hundred sixty-six and twenty-three hundredths feet set a granite stone twenty by twelve by eight inches, fifteen inches in the ground for fifteen mile corner, marked S. J. B. N. 15 M. on east face and P. L. on west face, with pits and mound of earth.

82 Fifteen thousand one hundred and twenty feet, old road west and east.

Seventeen thousand six hundred six and twenty-three hundredths feet set a limestone twenty-two by ten by eight inches, fifteen and one-half inches in the ground for fifteen and one-half mile corner, marked S. J. B. N. 15½ M. on east face and P. L. on west face with pits and mound of earth.

Eighteen thousand three hundred and fifty feet, road from Babacomari to Contention west and east.

Twenty thousand two hundred forty-six and twenty-three hundredths feet set a porphyry stone twenty-six by ten by eight inches, twenty inches in the ground for sixteen mile corner, marked S. J. B. N. 16 M. on east face and P. L. on west face, with pits and mound of earth. Whetstone peak bears north sixty-four degrees west. Huachucha peak No. three bears south ten degrees west.

Twenty-two thousand eight hundred eighty-six and twenty-three hundredths feet, set a granite stone twenty-six by twelve by eight

inches, 20 inches in the ground for sixteen and one-half mile corner, marked S. J. B. N. 16½ M. on east face and P. L. on west face, with pits and mound of earth. Rocky summit of Conical hill bears north eighty-four and one-half degrees east about one thousand feet. Mustang peak bears north eighty-eight degrees west.

Twenty-five thousand feet, wash, course west.

83 Twenty-five thousand three hundred and seventy-six feet, road, Fairbank to Fort Huachucha west and east.

Twenty-five thousand five hundred twenty-six and twenty-three hundredths feet, set a granite stone twenty-six by twelve by eight inches, twenty inches in the ground, for seventeen mile corner, marked S. J. B. N. 17 M. on the east face and P. L. on the west face, with pits and mound of earth. Grand Central mill bears north thirty-nine and one-half degrees east. Huachucha peak No. one bears south thirty-two degrees and thirty-four minutes west.

Twenty-seven thousand eight hundred and fifty feet, deep gulch, twenty ft. wide, northwest and southeast.

Twenty-eight thousand one hundred sixty-six and twenty-three hundredths feet, set a granite stone twenty-six by ten by eight inches, twenty inches in the ground for seventeen and one-half mile corner, marked S. J. B. N. 17½ M. on east face and P. L. on west face, with mound of stone west of corner.

Twenty-eight thousand three hundred thirty-nine and seventy-nine hundredths feet set a granite stone twenty-two by ten by ten inches, fifteen and one-half inches in the ground, for angle comer No. six, marked S. J. B. N. △ 6 on east and P. L. on west face, with a mound of stone west of corner, close to the north edge of a wash. Ajax peak bears south eighty-six and one-quarter degrees east, about six miles.

Thence south ten degrees and two minutes east.

84 Ten feet, center of wash, four feet wide, course west and east.

Three hundred and sixty feet, center of flat, one hundred feet wide, west and east.

One thousand three hundred and ninety-one feet, telegraph line west and east.

One thousand three hundred and twenty-six feet center of tract west and east.

One thousand seven hundred and fifty feet. Babacomari creek, eight feet wide course east.

Two thousand three hundred and eighty feet, John Giphart's ranch house about five hundred feet east.

Two thousand four hundred sixty-six and forty-four hundredths feet set a granite stone twenty-four by eleven by nine inches, eighteen inches in the ground, for eighteen mile corner marked S. J. B. N. 18 M. on east face and P. L. on west face with mound of stone west of corner.

Three thousand seven hundred feet, break of a brushy mesa.

Five thousand one hundred six and forty-four hundredths feet, set a granite stone twenty by twelve by twelve inches, fifteen inches

in the ground, for eighteen and one-half mile corner, marked S. J. B. N. 18½ M. on east face and P. L. on west face, with pits on line north and south of corner three feet distant.

85 Seven thousand five hundred and fifty feet, descend from mesa break, bears northeast and southwest.

Seven thousand seven hundred feet, enter flat extending several miles.

Seven thousand seven hundred forty-six and forty-four hundredths feet set a granite stone twenty-six by twelve by eighteen inches twenty inches in the ground for nineteen mile corner, marked S. J. B. N. 19 M. on east face and P. L. on west face, with pits and mound of stone. Huachucha peak No. one, bears south thirty-seven degrees west. Huachucha peak No. two bears south fourteen degrees and twelve minutes west.

Seven thousand seven hundred and sixty-two feet, road southwest and northeast.

Seven thousand seven hundred and seventy-nine feet, wire fence north boundary of Peter Crane's pasture.

Ten thousand two hundred and twenty-four feet, wire fence south boundary of Crane's pasture. Crane's house bears northeast about five hundred feet.

Ten thousand three hundred eighty-six and forty-four hundredths feet, set a volcanic stone twenty by fourteen by ten inches, fifteen inches in the ground, for nineteen and one-half mile corner, marked S. J. B. N. 19½ M. on east face and P. L. on west face, with pits and mound of earth.

Eleven thousand and fifty-four feet, road southwest and northeast.

86 Thirteen thousand twenty-six and forty-four hundredths feet, set a volcanic stone twenty-four by eighteen by six inches, eighteen inches in the ground for twenty mile corner, marked S. J. B. N. 20 M. on east face and P. L. on west face, with pits and mound of earth.

Fifteen thousand six hundred sixty-six and forty-four hundredths feet, set a granite stone thirty by twelve by six inches twenty-three inches in the ground, for twenty and one-half mile corner, marked S. J. B. N. 20½ M. on east face and P. L. on west face, with pits and mound of earth. Huachucha peak No. one bears south twenty-five degrees and fifty-five minutes west. Huachucha peak No. three bears south sixteen degrees west.

Eighteen thousand three hundred six and forty-four hundredths feet, set a granite stone twenty-one by thirteen by nine inches, fifteen and one-half inches in the ground for twenty-one mile corner, marked S. J. B. N. 21 M. on east face and P. L. on west face, with pits and mound of earth. Huachucha peak No. one bears south forty-two degrees and twenty-four minutes west. Huachucha peak No. two bears south sixteen degrees and forty-seven minutes west.

Twenty thousand nine hundred forty-six and forty-four hundredths feet set a granite stone twenty-four by twelve by seven

inches, eighteen inches in the ground for twenty-one and one-half mile corner, marked S. J. B. N. 21½ M. on the east face and P. L. on west face, with pits and mound of earth.

87 Charleston peak bears south sixty-five and one-quarter degrees east. Huachucha peak No. three bears south seventeen and one-half degrees west.

Twenty-three thousand five hundred and eighty-six and forty-four hundredths feet, set a granite stone twenty-four by twelve by seven inches eighteen inches in the ground, for twenty-two mile corner, marked S. J. B. N. 22 M. on the east face and P. L. on west face, mound of stone west of corner. Mount Wrightson (Santa Ritas) bears north eighty-five degrees and ten minutes west. Boston mill bears north twenty-one degrees and eighteen minutes east.

Twenty-six thousand two hundred twenty-six and forty-four hundredths feet, set a granite stone twenty-five by ten by eight inches, nineteen inches in the ground, for twenty-two and one-half mile corner, marked S. J. B. N. 22½ M. on east face and P. L. on west face, with pits and mound of earth.

Twenty-eight thousand eight hundred and forty-one feet cross stone wall of old building or enclosure, bears south seventy degrees west and north seventy degrees east.

Twenty-eight thousand eight hundred sixty-six and forty-four hundredths feet, set a granite stone thirty by twelve by twelve inches, twenty-three inches in the ground, for twenty-three mile corner, marked S. J. B. N. and 23 M. on the east face and P. L. on west face, with a mound of stone west of corner. Old Charleston burying ground five hundred feet right of line.

88 Twenty-eight thousand eight hundred and ninety-one feet, cross south wall of old enclosure.

Twenty-nine thousand one hundred and thirty feet, wash, four feet deep, six feet wide, course northeast.

Thirty-one thousand three hundred and seventy-five feet, wash six feet deep, twenty feet wide, course northeast.

Thirty-one thousand five hundred six and forty-four hundredths feet, set a sandstone twenty by fourteen by eight inches, fifteen inches in the ground for twenty-three and one-half mile corner, marked S. J. B. N. 23½ M. on east face and P. L. on west face, with pits and mound of earth.

Thirty-one thousand five hundred and fifty-six feet, road southwest and northeast.

Thirty-three thousand four hundred thirty-four and twenty-four hundredths feet, set a porphyry stone twenty-five by nine by nine inches, nineteen inches in the ground for angle corner No. seven, marked S. J. B. N. △ 7 on northeast and P. L. on southwest, with pits and mound of earth.

This is the southwest corner of the said grant from which United States mineral monument, Bronkow hill, bears south seventy-seven

degrees and eighteen minutes east. Huachucha peak No. three bears south twenty-one degrees and two minutes west.

South boundary.

89 Thence north seventy-nine degrees and fifty-eight minutes east on the south boundary of this grant.

Two hundred and forty feet, road north and south.

Seven hundred twelve and two tenths feet, set a volcanic stone twenty-six by eighteen by five inches, twenty inches in the ground, for twenty-four mile corner, marked S. J. B. N. 24 M. on north face and P. L. on south face, with pits and mound of earth.

Two thousand eight hundred and two feet road northeast and southwest.

Three thousand one hundred and fifty feet, valley road, north and south.

Three thousand three hundred twenty-eight and two-tenths feet, set a granite stone twenty-four by eighteen by ten inches, eighteen inches in the ground, for witness corner, marked S. J. B. N. 24½ M. on the north face and P. L. on the south face, and W. C. on west face, with pits and mound of earth.

This stone is placed at this point for the reason that the point for twenty-four and one-half mile corner falls in a wash.

Three thousand three hundred and sixty-three feet, center of wash five feet deep, thirty feet wide, course northeast.

Three thousand four hundred and two feet, wire fence, west boundary of Stark's corn field, bears north and south.

Three thousand eight hundred and fifty feet, Stark's ranch house about three hundred feet south.

90 Four thousand five hundred and seventy-seven feet, wire fence, east boundary of field.

Four thousand six hundred feet, center of San Pedro river, 10 feet wide, course north.

Four thousand seven hundred and seventy-seven feet, wire fence Arizona and Southeastern railroad.

Four thousand eight hundred and thirty-two feet, center of Arizona and Southeastern R. R. track on a curve northeast and southwest.

Four thousand eight hundred and eighty feet, telegraph line northeast and southwest.

Four thousand eight hundred and ninety feet, fence east boundary northeast and southwest.

Four thousand nine hundred and twenty feet, road north and south.

Five thousand nine hundred ninety-two and two tenths feet, set a porphyry stone twenty-four by twelve by eight inches, eighteen inches in the ground, for twenty-five mile corner, marked S. J. B. N. 25 M. on north face and P. L. on south face, with a mound of stone west of corner. Stack of Corbin mill bears north eight degrees and thirty-five minutes west, about one-half mile.

Eight thousand one hundred and thirty-two feet, shaft four feet deep, five feet right of line.

Eight thousand three hundred and five feet, variation of
91 needle sixteen degrees and twenty minutes east.

Eight thousand six hundred thirty-two and two-tenths feet, set a porphyry stone twenty by twelve by ten inches, fifteen inches in the group for twenty-five and one-half mile corner, marked S. J. B. N. 25½ M. on north face and P. L. on south face, with mound of stone north of corner.

Nine thousand one hundred and twenty-one feet, variation of needle nine degrees and fifty minutes east.

Ten thousand ninety and eight tenths feet, set a porphyry stone twenty by sixteen by eight inches, fifteen inches in the ground for angle corner No. eight, and the southeast corner of this grant, marked S. J. B. N. △ 8 on northwest face and P. L. on southeast face, with pits and mound of earth, no bearings available.

East boundary.

Thence north ten degrees and two minutes west on the east boundary of this grant.

One hundred and twelve feet, United States mineral monument, Bronkow hill bears south three degrees and fifty-six minutes west. Site of old hoisting engine, Bradshaw mine, bears north forty-nine degrees and twelve minutes east, eight hundred and eleven feet.

One hundred and seventy feet, old shaft filled up six feet right of line.

One thousand one hundred eighty-one and four-tenths feet,
92 set a prophyry stone twenty-six by ten by nine inches, nineteen and one-half inches in the ground for twenty-six mile corner, marked S. J. B. N. 26 M. on west face and P. L. on east face, with mound of stone west of corner.

One thousand six hundred and ninety-one feet, shaft (old) fifty feet right of line.

Two thousand four hundred and eighty feet, wash twenty feet wide, course west.

Three thousand feet, ridge east and west, covered with old mining work.

Three thousand five hundred and eighty feet, gulch fifty feet wide, course west. Adobe walls of old Bronkow house about five hundred feet east.

Three thousand eight hundred fifteen and four tenths feet, set a quartz stone twenty by sixteen by seven inches, ten inches in the ground to bed rock for witness corner to twenty-six and one-half mile corner, marked S. J. B. N. 26½ M. on west face and P. L. on east face, also W. C. on north face, mound of stone west of corner. This witness corner is set for the reason that the half mile corner falls upon a ledge of rock which is so decomposed that it cannot be legibly marked by a cold chisel. Said corner is within the bound-

es of the old Bronkow mine, now being worked and known as ean Richmond" mine.

Four thousand three hundred and forty feet, Tombstone and Charleston road east and west.

Six thousand four hundred sixty-one and four tenths feet, set a cement rock twenty by twelve by ten inches, fifteen inches the ground for twenty-seven mile corner, marked S. J. B. N. 27 M. west face and P. L. on east face, with pits and mound of earth. corner of sections thirty-five and thirty-six, township twenty th, range twenty-one east on fourth standard south bears forty rees and fifty eight minutes west, one thousand one hundred and nty-five feet, which is a granite rock nine by three inches, seven nes above ground, marked S. C. on north face, one notch on east , and five notches on west face.

even thousand and sixty feet, wash ten feet wide, course north- t.

even thousand nine hundred and thirty-six feet, road from San ro valley to Bisbee, southeast and northwest.

Nine thousand one hundred one and four tenths feet, set a granite ne twenty by eighteen by six inches, fifteen inches in the ground, twenty-seven and one-half mile corner, marked S. J. B. N. M. on west face and P. L. on east face, with pits and mound of th.

Eleven thousand seven hundred forty-one and four tenths feet, set ranite stone twenty-four by eighteen by six inches, eighteen inches the ground, for twenty-eight mile corner, marked S. J. B. N. 28 M. on west face and P. L. on east face, with a mound of stone west of corner. Whetstone peak bears north fifty-four degrees and four minutes west. Rincon peak bears north rty-three degrees and forty minutes west.

Fourteen thousand three hundred eighty-one and four-tenths feet, a granite stone twenty-four by sixteen by eight inches, eighteen hes in the ground, for twenty-eight and one-half mile corner, rked S. J. B. N. 28½ M. on west face and P. L. on east face, with s and mound of earth.

Seventeen thousand twenty-one and four tenths feet, set a granite ne twenty-four by twelve by nine inches, eighteen inches in the ound for twenty-nine mile corner, marked S. J. B. N. 29 M. west face and P. L. on east face, with pits and mound of earth. achucha peak No. 3 bears south twenty-one degrees west. Mount ightson (Santa Ritas) bears north eighty-seven and three-fourths grees west.

Eighteen thousand eight hundred and sixty-eight feet, road from mbstone to Boston mill southeast and northwest.

Nineteen thousand six hundred sixty-one and four tenths feet, set ranite stone twenty by twelve by twelve inches, fifteen inches in ground, for twenty-nine and one-half mile corner, marked S. J. N. 29½ M. on west face and P. L. on east face, with pits and ound of earth.

Twenty-one thousand and fifty feet, wash one hundred feet wide, course northwest.

Twenty-two thousand three hundred one and four tenths feet, set a granite stone twenty-four by fifteen by ten inches,
95 eighteen inches in the ground, for thirty mile corner, marked S. J. B. N. 30 M. on west face and P. L. on east face, with pits and mound of earth. Rincon peak bears north thirty-four degrees and fifty-six minutes west. Huachucha peak No. three bears south nineteen degrees and thirty-five minutes west.

Twenty-four thousand nine hundred forty-one and four tenths feet, set a granite stone twenty-two by ten by ten inches, fifteen and one-half inches in the ground, for thirty and one-half mile corner, marked S. J. B. N. 30½ M. on west face and P. L. on east face, with mound of stone west of corner.

Ajax peak bears out north sixty-nine and one-quarter degrees east. San José peak bears south thirty-nine degrees and thirty-five minutes east.

Twenty-six thousand four hundred and sixty-one feet, telegraph pole Arizona and South Eastern Railroad station. Fairbank, bears north twenty-eight degrees and twenty-eight minutes west. A. L. Noyes' ranch house bears south sixty-two degrees and thirty-eight minutes west. Depot New Mexico and Arizona railroad, Fairbank, bears north thirty-three degrees and five minutes west.

Twenty-seven thousand five hundred eighty-one and four tenths feet, set a porphyry stone twenty by eighteen by ten inches, fifteen inches in the ground, for thirty-one mile corner marked S. J. B. N. 31 M. on west face and P. L. on east face, with pits and mound of earth. P. Crane's ranch house bears south fifty-six degrees and five minutes west. Noyes' bears south forty-three degrees and forty
96 minutes west. F. M. Likes' bears north eighty-six degrees and fifteen minutes west.

Twenty-eight thousand feet, wash one hundred feet wide, course west.

Thirty thousand two hundred twenty-one and four tenths feet, set a granite stone twenty by twelve inches, fifteen inches in the ground for thirty-one and one-half mile corner, marked S. J. B. N. 31½ M. on west face and P. L. on east face, with mound of stone west of corner.

Thirty-two thousand and twenty-five feet, wash one hundred and fifty feet wide, course west.

Thirty-two thousand eight hundred sixty-one and four tenths feet, set a granite stone twenty-one by eighteen by eight inches, fifteen and one-half inches in the ground for thirty-two mile corner, marked S. J. B. N. 32 M. on west face and P. L. on east face, with pits and mound of earth. Likes' house bears south forty and one-half degrees west. Huachucha peak No. three bears south, seventeen degrees and seventeen minutes west.

Thirty-three thousand five hundred and sixty feet, flat one hundred feet wide east and west.

Thirty-three thousand nine hundred twenty-eight and seven tenths feet strike a point two and three tenths feet east of angle corner No. one or the place of beginning, the closing error being but two feet.

The said grant is situated in townships eighteen, nineteen, twenty and twenty-one south, range twenty-one east of the
97 Gila and Salt River meridian in the county of Cochise, Territory of Arizona, and contains an area of seventeen thousand three hundred fifty-five and eighty-six hundredths acres.

To have and to hold the above described premises, together with all and singular the rights and appurtenances thereto in any wise belonging unto the said Boquillas Land and Cattle Company, its successor, or successors and assigns forever. And the said parties of the first part do hereby bind themselves, their heirs, executors and administrators to warrant and forever defend all and singular the said premises unto the said Boquillas Land and Cattle Company, its successor, or successors and assigns against every person lawfully claiming or to claim the same or any part thereof, by through or under them or either of them.

In witness whereof, the said Phebe A. Hearst and the said William R. Hearst have executed these presents the day and year first hereinbefore written.

PHEBE A. HEARST,
WILLIAM R. HEARST,
By EDWARD H. CLARK,
His Attorney in Fact.

U. S. rev. stamps $15.00 cancelled 7/3 1901.

Signed, sealed and delivered in the presence of:

FRED CLARK,
R. A. CLARK,
Witnesses to Signature of Phebe A. Hearst.

98 FRED CLARK,
F. G. DRUM,
Witnesses to Signature of Wm. R. Hearst.

STATE OF CALIFORNIA,
City and County of San Francisco, } ss:

On this twelfth day of July, A. D. one thousand nine hundred and one, before me, N. E. W. Smith, a notary public in and for said city and county, personally appeared Phebe A. Hearst (widow) known to me to be the person whose name is subscribed to the within instrument, and acknowledged to me that she executed the same.

In authentication whereof, I have hereunto affixed my signature and seal of office, at said city and county, the day and year last above written.

[SEAL.] N. E. W. SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

STATE OF CALIFORNIA, } ss:
City and County of San Francisco, }

On this twelfth day of July, A. D., one thousand nine hundred and one, before me, N. E. W. Smith, a notary public in and for said city and county, personally appeared Edward H. Clark known to me to be the person whose name is subscribed to the within instrument as the attorney in fact of William R. Hearst, unmarried, and the said Edward H. Clark acknowledged to me that he sub-
99 scribed the name of William R. Hearst thereto as principal and his own name as attorney in fact.

In authentication whereof, I have hereunto set my hand and affixed my official seal, at my office in the city and county of San Francisco, the day and year in this certificate first above written.

[SEAL.] N. E. W. SMITH,
Notary Public in and for the City and County of San Francisco, State of California.

(Endorsed:) Recorder's office, Tombstone, Cochise Co., A. T. Filed and recorded at request of A. B. Snowgrass, July 17, A. D. 1901, at 10–40 a. m. Book 14 Deeds of R. E. page 473 to 486 inc. Frank Hare, county recorder.

(Endorsed:) #2232 P. Ex. 4. Filed June 5, 1902. Geo. B. Wilcox, clerk.

TERRITORY OF ARIZONA, } ss:
County of Cochise, }

I, Geo. B. Wilcox, clerk of the district court, first judicial district of the Territory of Arizona, in and for said county, do hereby certify that the annexed is a full, true and correct copy of a certain deed from Phebe A. Hearst and Wm. R. Hearst to Boquillas Land and Cattle Co. on record in the recorder's office of Cochise county, in Book 14 of Deeds at pages 473 to 486 inc.

100 Witness my hand and official seal this 26th day of June, A. D., 1902.

[SEAL.] GEO. B. WILCOX,
Clerk of the District Court.

(Endorsed:) No. 2232. In the district court of the first judicial district, county of Cochise. Certified copy Plaintiff's Ex. 4.

No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al. vs.* Boquillas Land & Cattle Co. Certified copy Pl't'f's Ex. 4. Filed August 21, 1902. James Allen Cox, clerk. By Angie B. Parker, deputy.

101 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS ET AL., Appellants, *vs.* BOQUILLAS LAND AND CATTLE COMPANY, Appellee.	No. 796. Appeal from the District Court of Cochise County, Hon. Fletcher M. Doan, Judge.

Ben Morgan, Esq., for appellants.
English & Bowman, for appellee.

By the COURT:

If we could, without violating the fundamental rules of practice, decide this case upon the briefs of counsel, enough could possibly be found therein in the way of statements and admissions, as to the action of the trial court, from which an intelligent review of the case might be made. The record itself, however, and not the briefs of counsel, must be the basis for any review of the case.

By stipulation the record on this appeal was restricted to the following papers, viz: The judgment roll, the motion for a new trial and the ruling thereon, a written stipulation as to a part of the evidence of the defendants in the action, certain exhibits, the bond on appeal, an assignment of errors, and an admission that the
102 appellee is a corporation authorized to do business in this Territory.

There is no bill of exceptions and no statement of facts or transcript of the evidence in the record.

Counsel for appellants, in his brief, has argued the case as though the entire evidence was before us.

As the judgment of the court recites that witnesses were sworn and testified in behalf of the respective parties, and documentary evidence introduced and filed, we cannot assume that the exhibits and the written stipulation contained in the record, brought to this court, constitute all of the evidence which the trial court had before it in rendering its judgment.

The abbreviated record on this appeal presents no matter which this court can consider except the one question as to whether the pleadings support the judgment.

The complaint contains the usual and ordinary allegations required in an action of ejectment under our statutes.

The answer of the defendants is a general denial and pleas founded upon the various statutes of limitations applying to actions for the possession of real property.

The court found that the "plaintiff and its predecessors and grantors in interest, since the first day of January, 1875, have been and the plaintiff still is the owner and entitled to the possession of the lands and premises" sued for and of each and every part and portion thereof; that none of the defendants are entitled to
103 the possession of said lands and premises or any part or portion thereof; and that the plaintiff is entitled to the immediate possession of the whole of said lands and premises and to a writ of possession therefor.

The court further found that for more than ten years preceding the 14th day of December, 1900, the defendants had withheld possession of divers portions of the land sued for from the plaintiff and its grantors and predecessors in interest; and that since said 14th day of December, 1900, the annual value of the rents, issues and profits of that part of said land so withheld from plaintiff by said defendants were certain specific amounts set forth in the finding.

The judgment of the court followed the findings and ordered the restitution of the land sued for and entered judgment against the defendants for the value, as thus found, of the rents, issues and profits of the lands withheld by the defendants.

While there is no specific finding of an ouster by any of the defendants, the findings, that the plaintiff and its grantors have been the owners and entitled to the possession of the land sued for since the first day of January, 1875, and that the defendants have since the 14th day of December, 1900, withheld possession from the plaintiff and its grantors and continue to so hold the same, meet the requirements of our statute in force at the time this action was begun.

Paragraph 3139, Revised Statutes of 1887 reads as follows:
104 "It shall be sufficient to entitle the plaintiff to recover to show at the time the action was commenced, the defendant was in possession of the premises claimed, and that the plaintiff had a right to the possession thereof."

The question whether the evidence was sufficient to establish the ownership of the lands in question by the appellee, and the question whether the defendants had shown peaceable and adverse possession under the statute of limitations set up in their answer, are not presented in the record and therefore cannot be considered by us.

No error appearing upon the face of the record presented, the judgment of the trial court is affirmed.

We concur.

EDWARD KENT,
Chief Justice.
GEO. R. DAVIS,
Associate Justice.
RICHARD E. SLOAN,
Associate Justice.

(Endorsed:) No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al.* appellants, *vs.* Boquillas Land and Cattle Co., appellee. Opinion. Recorded Book 5 pages 358–360. Filed March 20th, 1903. S. M. Cullom, clerk.

105 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.
} Petition for Re-hearing.

To the chief justice and associate justices of the supreme court of the Territory of Arizona:

Your petitioners, the appellants, in the above entitled action, move and pray this honorable court to grant them a rehearing in said action, and specify and rely upon the following grounds for a rehearing in said action.

I.

We respectfully submit that the learned justice who wrote the opinion, has inadvertently mistaken the conclusions of law for the statements of fact as actually found by the lower court.

The following quotation found in the opinion of the court, to-wit: "The court found 'that the plaintiff and its predecessors and grantors in interest, since the 1st day of January, 1875, has been, and the plaintiff still is the owner and entitled to the possession of the land and premises sued for, and of each and every part and parcel thereof; that none of the defendants are entitled to the pos-
106 session of said lands and premises, or any part or portion thereof, and that the plaintiff is entitled to the immediate possession of the whole of said lands and premises, and to a writ of possession therefor," form no part of the findings of fact as made by the lower court, but are stated as conclusions of law from other findings of fact. Transcript page 10 commencing at folio 30.

On page 10 of the transcript, the lower court says: "And now as conclusions of law, from the *foregoing facts* the court now hereby finds and decides, and then states as conclusions of law from said foregoing facts the matters stated in the quotation above made, which is found in the opinion of this court, and stated to be a finding of fact.

The learned justice of this court also says: "The court found that for more than ten years preceding the 14th day of December, 1900, the defendants had withheld possession of divers portions of the land sued for from the plaintiff and its grantors and predecessors in interest, and that since said 14th day of December, 1900, the annual value of the rents, issued and profits of that part of the land so with-

held from plaintiff by said defendants, were the amounts set forth in the finding."

The last part of the opinion above quoted, is really a finding of fact, and is found among the findings of fact made by the lower court.

The opinion of the supreme court also states, that the judgment of the court followed the findings and ordered restitution of
107 the land sued for and entered judgment against the defendant for the value of the rents, issues, profits, etc.

With all due deference to the learned justice who wrote the opinion, we beg to submit that the judgment of the lower court does not follow the findings. We will briefly state all of the findings made by the lower court as distinguished from the conclusions of law drawn from said findings. They are briefly as follows: That all of the defendants named in plaintiff's complaint were personally served; that the premises sued for are situated in Cochise county; that certain named defendants have filed disclaimers; that certain other defendants not disclaiming or answering, have failed to appear; that their default has been entered; that for more than one year last passed the plaintiff has been and still is a corporation; that on the 8th day of May, 1833, the Mexican government, by good and sufficient grant, conveyed to plaintiff's grantors and predecessors the lands in controversy; that on December 14th, 1900, the United States Government recognized and confirmed the validity of the grant by its letters patent to Gonzales and Felix, and to their heirs, successors and assigns, and decreed that W. R. and Phœbe A. Hearst had acquired an undivided interest in said lands from said two grantees; that on December 24th, 1901, the Hearsts had conveyed all their interest to the plaintiff; that plaintiff had not since disposed of its title so acquired; that each and every of said defendants on
108 the 14th of December, 1900, had been, for more than ten years preceding that date, occupying various portions of said lands, and have, since said date, withheld possession of divers portions thereof from plaintiff and its grantors and predecessors in interest, and still withhold the same. That since December 14th, 1900, the annual rental value of the land withheld by plaintiff from defendants amounted to so much to each defendant. Transcript pages 8, 9, and 10, and then follows the conclusions of law.

It is apparent from the complaint and these findings, which are all the findings contained in the record, that the possession by defendants for ten years previous to the bringing of the action was adverse, (otherwise there would have been no withholding of possession nor suit). We say then, that the allegations of the complaint and this finding in favor of defendants, that they were in the adverse possession for ten years *is* absolutely inconsistent with the finding that plaintiff is entitled to the possession, because as matter of law, an adverse possession for ten years tolls the plaintiff's right of entry and confers title upon the defendants so in possession.

A bill of exceptions is necessary only when it is desired that the appellate court should review the evidence.

Paragraphs 1464 & 1486 of Revised Statutes of Arizona, 1901.

Its only purpose is to make something appear of record which without it would not so appear.

Maricopa County *v.* Rosson, 40 Pac. 314.

109 Weeks *v.* Gold Mining Company, 73 Cal. page 603.

Wood *v.* Eitwanda Water Co., 54 Pac. 726.

Painter *v.* Painter, 113 Cal. 375.

McHugh *v.* Adkins, 117 Cal. 228, a case directly in point.

Packard *v.* Craig, 114 Cal. 98.

Findings are a matter of record, and the case stands as an appeal on the judgment roll on questions of law alone and presents the question whether or not the conclusion- of law drawn from the findings as actually made by the judge of the district court are consistent with them and are supported by the findings of fact, and whether the judgment follows those findings.

Kansas City & F. T. S. Cement Co. *v.* Reese, 42 Pac., 832.

American R. W. & M. Co. *v.* Bear R. W. & M. Co., 11 Cal., 339.

McGill *v.* Rainaldi, 11 Cal. 391.

Tomlison *v.* Ayers, 117 Cal., 572; 49 Pac., 717.

Western Irrig. Co. *v.* Stayton, 41 Pac., 985.

It is elementary law that where the findings are indefinite, uncertain and inconsistent, they will not support a judgment.

Freeman *v.* Badgley, 105 Cal., 372; 38 Pac., 955.

Gilman *v.* Curtis, 66 Cal., 116.

In Learned *v.* Castle, 78 Cal., 460, says the supreme court: "The rule on this subject may safely be said to go this far, at least,
110 that where there are contradictory findings about matters material to the merits of the case, and the determination of which, one way or the other, is essential to the correctness of the judgment, there the judgment cannot stand. If one part of the contradictory findings would support the judgment, and another part would necessarily upset it, then the judgment must be reversed." Citing a number of cases.

The record in this case shows findings that are contradictory and inconsistent with each other. On the part of the plaintiff it is found, that on the 8th of May, 1833, the Mexican government conveyed a valid title to plaintiff's grantors and predecessors in interest; that on the 14th of December, 1900, the United States Government, by its letters patent, recognized and confirmed the validity of said grant to plaintiff's predecessors in interest, Gonzales and Felix, and found and decreed that the Hearsts had an undivided interest in the same, that on December 24th, 1901, the Hearsts conveyed said interest to the plaintiffs. Transcript page 9.

The record shows that plaintiff commenced its action on August 26th, 1901, about four months before it acquired title. Trans page 3.

On the part of the defendants it is found, that they were in possession ten years next preceding the 14th of December, 1900, of portions of the land in controversy, and still are.

The inconsistency consists in this: The findings say that the plaintiffs are the owners of the Hearsts' interest, but they
111 also say, that plaintiff did not acquire title until about four months after it brought suit. These two findings are wholly inconsistent with each other, because in ejectment the plaintiff can recover only on the title he holds at the time of the commencement of the action.

Sacramento S. B. *v.* Hynes, 50 Cal., 195.

The judgment does not follow the findings for the reason that it decrees title to the plaintiff, while the findings show it did not own the title at the commencement of the action.

The findings also say that defendants have been in adverse possession for ten years and still withhold possession, which is a sufficient length of time to give them title as matter of law. Trans. pages 9 and 10.

McDonald *v.* M. V. Homeste-d Association, 51 Cal. 210.

This last finding is inconsistent with the finding that plaintiff is the owner and entitled to possession.

In some cases it is true that the finding of ownership is a finding of fact. Whether a party is entitled to possession of land must be a conclusion of law from the fact of ownership. A finding that a party is entitled to possession of land we imagine would not stand a moment if it was not also found that he was the owner. It seems to us that this shows conclusively that a statement that a party is entitled to possession of land is purely a conclusion of law, par. 3139 Revised Statutes of Arizona 1887 shows this to be so.

112 But admitting, for the sake of argument, that the conclusions of law to the effect that the plaintiff is the owner and entitled to the possession of the lands in centroversy can be treated as a finding of fact, then we have this condition of affairs: That this finding would support a judgment in favor of plaintiff, and that the other finding, to-wit, that defendants were in adverse possession for ten years, would upset it, and according to the case of Learned *v.* Castle, *supra*, the judgment of the lower court must be reversed.

Paragraph 1464 Revised Statutes of Arizona 1901, provides: "That where the ruling or other action of the court appears otherwise of record, no bill of exceptions shall be necessary to reserve an exception thereto." And paragraph 1485 provides: "That every paper filed in the case shall constitute a part of the record of the case."

Reynolds *v.* Harris, 8 Cal. 617.

Maricopa County *v.* Rosson, 40 Pac. 314.

Now the findings in this case are a part of the record (Trans. pages 7 to 10 inclusive), and the ruling and action of the court complained of in our assignments of error appear therein and are sufficient on appeal to enable the court to decide the question whether or not as matter of law the conclusions drawn by the court below are in harmony with the findings, and whether or not as matter of law the judgment is consistent with and follows those findings.

113 Watson *v.* Sawyer, 40 Pac. 413.

The following assignments of error present these questions as matter of law:

2nd. That the findings and judgment are against law.

3rd. That the court erred in rendering judgment in favor of plaintiff and against defendants.

4th. The court erred in not rendering judgment for defendants.

5th. That the findings do not support the judgment.

6th. That there is a fatal variance between the findings of fact and the conclusions of law.

7th. That the findings of fact are outside of the issues made by the pleadings. Transcript page 33.

Paragraph 1406 of the Revised Statutes of Arizona 1901, provides: That the findings and conclusions of law shall be separately stated. The intention of this act is, that the decision of the court upon the facts shall be the basis of the judgment in like manner as a verdict of the jury.

Russel *v.* Armador, 2 Cal. 305, 84 Texas, 664.

Now suppose a jury had found a verdict to the effect that plaintiff was the owner, and in the same verdict had found that defendants had had adverse possession of the land in controversy for ten years before suit was commenced, what judgment could be rendered upon such a verdict?

114 And Paulson *v.* Nunan, 64 Cal. 290, holds that conclusions of law cannot be regarded as findings of fact.

The ultimate facts presented by the pleadings in this case, were on the part of the plaintiff, was it the owner or entitled to the possession of the land in controversy at the time the suit was filed? To maintain its action, plaintiff had to prove that it had a paper title at the commencement of the action, or had been in possession prior thereto; and second, that defendants had ousted it of that possession. To defeat this showing, defendants had to show possession for ten years under the statute of limitations as pleaded by them.

The record shows that plaintiff had neither possession nor paper title prior to nor at the time it commenced its action. On the contrary, there is a distinct finding that each and every of said defendants were, on the 14th of December, 1900, and had been for more than ten years next preceding that date, occupying various portions of said land and premises, and still and now (referring to the date of the trial) so withhold the same. Transcript pages 9 and 10 folios 27 to 29 inclusive.

The record also shows there is a distinct finding to the effect that on December 24th, 1901, W. R. and Phœbe A. Hearst conveyed their interest in said lands and premises to plaintiff. Trans. page 9 folio 27.

The record also distinctly shows that the action was filed August 26th, 1901, some four months, lacking two days, before
115 plaintiff acquired the Hearsts' title.

Unless the conclusions of law can be treated as findings of fact, there is nothing in the record to show that plaintiff was ever in possession or had any paper title when the action was commenced. But it may be contended that every presumption being in favor of the judgment that it should be affirmed, and this would be the correct rule in a proper case. In the case at bar, however, there is a direct finding in favor of defendants that they were in adverse possession of the land in controversy for ten years prior to the commencement of the action, and that plaintiff did not acquire title until after suit was brought, and this necessarily defeats the right of plaintiff to recover, and overcomes this presumption.

Paragraph 1406 of the Revised Statutes cited above, "imposes upon the judge the duty of stating separately his findings of fact and his conclusions of law. The reason is obvious that the court may examine the facts found and see whether or not they justify the conclusions of law and the judgment supported by them."

Savings & L. C. *v.* Burnet, 106 Cal. 539.

In the case above cited, the supreme court of California says: "It is true that ownership may be pleaded and found as an ultimate fact * * * but it is equally true that ownership may be pleaded as a conclusion of law and may be determined by the court as such a conclusion and not as a fact." Thus in Turner *v.*
116 White, 73 Cal. 299, this court said: "It is perfectly true that in general an allegation that a party is the owner of real property is an allegation of an ultimate fact and not a conclusion of law."

But as held in Levins *v.* Rovegno, 71 Cal. 273, the same averment or statement may be of a fact or of a conclusion according to the context. There, as here, the court found as a conclusion of law the defendants are the owners in fee simple, and this court, after an elaborate discussion of the subject of findings, declare: "That the court below properly treated the ownership as conclusion of law to be deduced from the facts found. * * * If it be not clear that the statement be not one of fact, this court will be reluctant to take it from its context and treat it as a fact."

Reading the findings and conclusions of law as a whole, it seems to us that it is apparent that the statement found on page 11 of the transcript, that plaintiff is the owner and entitled to the possession of the lands and premises in plaintiff's complaint and herein (therein) particularly described, is, from its context and frame, a conclusion of law, drawn, as the court says on page 10 of the transcript, from

"the foregoing facts," that is the facts found on pages 8, 9 and 10 of the transcript.

While it may be true as decided by the court in this case, that for want of a bill of exceptions this court cannot examine into the sufficiency of the evidence to establish the ownership of the
117 lands in question by the appellee, and the question whether the defendants had shown peaceable and adverse possession under the statute of limitations set up in their answer, it must be the law that it can determine whether the judgment is supported by the findings of fact.

Suppose, for instance, in this case, that the court, after finding that plaintiff was the owner of the land sued for, had entered up a judgment for the defendants, would not this court say at once that the judgment was not supported by the findings and did not follow them, and reverse the decision of the lower court?

The court in its opinion in this case says: "The abbreviated record on this appeal presents no matter which this court can consider except the one question as to whether the pleadings support the judgment." This ignores the findings and conclusions of law entirely. We respectfully insist that there is at least one other question presented by the record, and that is, whether the judgment follows the findings and is supported by them. And we respectfully submit that we have demonstrated by the authorities above cited that the judgment in this case does not follow the findings and is not supported by them, and that a re-hearing should be granted.

Respectfully submitted,

BEN MORGAN.
BEN GOODRICH.

118 (Endorsed:) Original. No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al.*, appellants, *vs.* Boquillas Land & Cattle Co., appellee. Motion for re-hearing. Due service of the within motion is hereby acknowledged this April 1st, 1903, English & Bowman, atty's for appellee. Filed April 2, 1903, S. M. Cullom, clerk.

119 In the Supreme Court of the Territory of Arizona.

J. N. CURTIS ET AL., Appellants, vs. BOQUILLAS LAND AND CATTLE CO., a Corporation, Appellee.	No. 796. Appeal from the District Court of Cochise County—Hon. Fletcher M. Doan, Judge.

Ben Goodrich for appellants.
Francis J. Heney and Allen R. English for appellee.

Opinion by SLOAN, *J.*:

Upon the petition of appellants, a rehearing was granted in this case at the last term of the court. The grounds stated in the peti-

tion were two: First,—That the findings show that the appellee acquired its title to the property in controversy subsequent to the date of the commencement of the action. Second,—That the findings show that the appellants had held adverse possession of the lands in controversy for a period exceeding ten years, and that, therefore, appellee's right of action was barred under paragraph 2938 of the Revised Statutes of 1901.

Under the first ground, counsel for the appellants calls attention to the finding "that on the 24th day of December, 1901, the said W. R. Hearst and Phœbe A. Hearst, by deed in writing, con-
120 veyed all of their said interests in and to the said lands and premises to the plaintiff herein." The complaint was filed on the 26th day of August, 1901. It would, therefore, appear from the finding that the appellee acquired its interest in the land subsequent to the bringing of the action.

An examination of the original transcript on appeal discloses that in the findings signed by the trial court the date appears as the third day of July, 1901. In the abstract of the transcript, by mistake, the latter date appears to have been changed to that of the 24th day of December, 1901.

It is further pointed out that the finding referred to in the opinion of the court, upon the first hearing, that "the plaintiff and its predecessors and grantors in interest since the first day of January, 1875, have been and the plaintiff still is the owner and entitled to the possession of the lands and premises" appears in the findings as a conclusion of law; and it is argued that it cannot, therefore, be regarded as a finding of fact. As it reads it is a statement of an ultimate fact and not a mere conclusion of law. That it appears among the conclusions of law is unimportant, and is certainly an insufficient reason for reversing the judgment.

Burton *vs.* Burton, 79 Cal. 490.
Seers *vs.* Dixon, 33 Cal. 326.

Ownership was one of the ultimate facts to be found under
121 the issues, and the finding quoted is sufficient to sustain the judgment in this behalf.

Moore *vs.* Clear Lake Water Works, 68 Cal. 146.
Wheelock *vs.* Godfrey, 35 Cal. 320.

The defendants pleaded the several statutes of limitations pertaining to actions for the recovery of land in bar of the action; one of these pleas, by a liberal construction, comes within the provisions of paragraph 2938, Revised Statutes. This paragraph was incorporated into our laws by the revision of 1901 and took effect on the 1st day of September, 1901. Prior to its adoption there was no statute of limitations in this Territory, barring a right of action for the recovery of lands by one claiming title against another holding by peaceable and adverse possession merely.

One of the findings reads as follows:

"That each and every of said defendants in this cause, were, on

the 14th day of December, 1900, and had been for more than ten years next preceding that date, occupying various portions of the said lands and premises, and each and every of the said defendants who appear herein and also those of said defendants who have failed to appear and answer herein, have, since the last named date, withheld possession of divers portions of said lands and premises from the plaintiff and its grantors and predecessors in interest and still and now so withhold the same."

122 It is urged that this finding brings the case within the limitation prescribed by paragraph 2938. Were we to hold, which we do not, that its effect is to show peaceable and adverse possession by the appellants for the period of ten years, the question is presented whether the statute applies to this case.

Upon few, if any, branches of the law is there such a contrariety of view expressed by the courts as upon the effect to be given new statutes of limitation upon causes of action existing at the time the statutes go into effect. The general rule applied to such statutes is that they will not be given a retroactive effect unless it clearly appears that the legislature so intended.

Ogden *vs.* Saunders, 12 Wheat. 213.
United States *vs.* Heth, 3 Cranch. 399.

The Supreme Court of the United States in Sohn *vs.* Watterson, 17 Wallace, 596, held that a statute which absolutely bars causes of action existing at the time of its passage is unconstitutional. It was further held that to avoid such a result and to give such a statute "a construction that would enable it to stand, courts have given it a prospective operation."

In the case of Terry *v.* Anderson, 95 U. S. 632, it was held that a statute of limitation which, by its terms, affects rights of action accrued at the time of its passage is not unconstitutional, provided a reasonable time be given for the commencement of the suit

123 before the bar takes effect, and that the question of reasonable time is one primarily for the legislature to determine.

In the case of Wrightman *v.* Boone County, 82 Federal Rep. 413, it was held that a statute which, by its terms, embraces causes of action which have accrued prior to its enactment, but which is made to take effect at a future date, is to be construed as requiring actions, which will be barred by the new statute upon its taking effect, to be begun before the date fixed when it is to go into effect, and as giving due notice that such actions would be barred if not begun within that period.

Mr. Justice Cooley, in Price *v.* Hopkin, 13 Michigan, 318, criticised this rule as being unsound for the reason that, in effect, it was making the statute perform its office before it took effect.

As pointed out by the court in the Wrightman case, the weight of authority is in favor of the rule as above stated.

Duncan *v.* Menard, 21 N. W. 714;
Eaton *v.* Supervisors, 40 Wis., 673;
Smith *v.* Morrison, 22 Pick., 430.

The only expressions which throw light upon the construction to be given new statutes of limitations as affecting existing causes of action are found in paragraphs 2974 and 4243, Revised Statutes.

124 The former reads: "No one of the provisions of this title shall be so construed as to revive any claim which is barred by pre-existing laws; and all claims against which limitation under said laws had commenced to run shall be barred by the lapse of time which would have barred them had those laws continued in force."

The latter paragraph reads:

"When a limitation or period of time prescribed in any act herein repealed for acquiring a right or barring a remedy or for any purpose has begun to run before this act takes effect and the same or any limitation is prescribed in any act passed at this session of the legislature the time which has already run shall be deemed part of the time prescribed as such limitation by any act passed at this session of the legislature."

These paragraphs obviously refer to the repeal of existing statutes and the enactment of new statutes upon the same subject, and have no reference to new legislation where none previously existed, and therefore have no bearing upon the construction to be given said paragraph 2938.

It was held in the case of Vreeland *vs.* Town of Bergen, 34 N. J. Law, 438, that an act which merely limited the time within which an action may be brought does not apply to a suit which, though commenced after the passage of the act, was pending at the time the same took effect. The logic of this rule is apparent, particu-

125 larly when applied to a case like the one at bar where the action was begun before the act took effect and at the time no other statute of limitations was in force as to such actions.

Under no canon of construction, therefore, or rule giving a retrospective effect to new statutes of limitation, can paragraph 2938 be made to apply to the case at bar.

The judgment, therefore, is sustained by the findings and no error appears on the face of the record.

The judgment is affirmed.

RICHARD E. SLOAN,
Associate Justice.

We concur:

EDWARD KENT,
Chief Justice.

GEO. R. DAVIS,
Associate Justice.

(Endorsed:) No. 796. In the supreme court of the Territory of Arizona. J. N. Curtis, *et al. vs.* Boquillas Land and Cattle Company, Opinion. Filed March 26, 1904. S. M. Cullom, clerk.

126 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. GRAY, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodrigues, Delores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valensuela, Ben Heney, Wong Fook Ling, Charley Wong, Appellants,

vs.

BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.

H. C. Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray and Peter Crane, the above named appellants conceiving themselves aggrieved by the final judgment of the supreme court of the Territory of Arizona, made, given, rendered and entered on the 26th day of March, 1904, in the above entitled action, against them, the said appellants, and in favor of the above appellee, The Boquillas Land & Cattle Company, a corporation, do hereby appeal from said judgment to the Supreme Court of the United States for the reasons specified in the assignment of errors which is filed herewith, and hereby pray that their said appeal be allowed, and that a citation be duly signed and issued, and that a transcript of the record,
127 proceedings, opinion, judgment, evidence and findings in the nature of a special verdict in the case duly authenticated may be sent to the Supreme Court of the United States.

Dated this 25 day of April, A. D. 1904.

H. C. HERRICK,
CHARLES LABROSSE,
W. S. GRAY,
A. V. NOYES,
LEON LARRIEU,
PETER CRANE,
By BEN GOODRICH, Attorney.

The above application having been duly presented and considered on this the 25th day of April, A. D. 1904, it is hereby ordered that the appeal above prayed for be allowed, and the same is hereby allowed on filing a good and sufficient bond for costs in the sum of one thousand ($1000.00) dollars; said bond to be approved by me.

Dated this 25 day of April, A. D. 1904.

EDWARD KENT,
Chief Justice of the Supreme Court
of the Territory of Arizona.

128 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. GRAY, ——Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodriges, Delores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valensuela, Ben Heney, Wong Fook Ling, Charley Wong, Appellants,

vs.

BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.

TERRITORY OF ARIZONA, } *ss.*
County of Maricopa, }

Ben Goodrich being duly sworn, says: That he is the attorney for the appellants named in the above entitled action; that this action was brought by the appellee The Boquillas Land & Cattle Company, a corporation, to recover possession of the Rancho San Juan de las Boquillas y Nogales alleged to consist of 17,355.86 acres, and damages against appellants for unlawfully withholding possession thereof from plaintiff in the sum of $10,000.00, and for the further sum of $10,000.00 per year, the annual value of the rents and profits of said land from November 28th, 1900; that the matter in
129 dispute, exclusive of costs, exceeds the sum of $5,000.

BEN GOODRICH.

Subscribed and sworn to before me this 25th day of April, 1902.

[SEAL.] SHELBY M. CULLOM,
Clerk Supreme Court of Arizona,
By ANGIE B. PARKER, Deputy.

(Endorsed:) No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al.*, *vs.* Boquillas Land and Cattle Co. Petition for and allowance of appeal. Filed April 25, 1904. S. M. Cullom, clerk.

130 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS, H. C. HERRICK, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray and Peter Crane, *et al.*, Appellants,
vs.
BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.

Assignments of Error on Appeal from the Supreme Court of the Territory of Arizona to the Supreme Court of the United States.

Now come the appellants H. C. Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray and Peter Crane, and say:

That in the records and proceedings herein, there is manifest error, and that the supreme court of the Territory of Arizona erred in this, to-wit:

1st. In holding and deciding that the record of the district court of Cochise county on appeal to the supreme court of the Territory of Arizona was insufficient as a basis for any review of the case.

2nd. In holding and deciding that the record from the district court of Cochise county to the supreme court of the Territory of Arizona presented no matter which said supreme court could consider, except the one question as to whether the pleadings support the judgment.

3rd. In holding and deciding that the judgment of the
131 supreme court of the Territory of Arizona followed the findings of the district court of Cochise county.

4th. In holding and deciding that the findings of the district court of Cochise county that plaintiff and its grantors had been the owners and entitled to the possession of the land sued for since the 1st day of January, 1875, and that appellants have since the 14th day of December, 1900, withheld possession from plaintiff and its grantors, and continued to so withhold the same without specifically finding an ouster of plaintiff by any of the defendants was sufficient to support the judgment.

5th. In holding and deciding that the question whether the evidence was sufficient to establish the ownership of the lands in question in the appellee, and the question whether the appellants had shown peaceable and adverse possession under the statute of limitations set up in their answer were not presented in the record from the district court of Cochise county and could not be considered by the supreme court of the Territory of Arizona.

6th. In holding and deciding that no error appeared upon the face of the record presented to the supreme court of the Territory of Arizona.

7th. In affirming the judgment of the district court of Cochise county and in not reversing the judgment of the district court of Cochise county and granting appellants a new taial.

132 8th. In holding and deciding that the evidence supported the findings and judgment of the district court of Cochise county.

9th. In holding and deciding that the findings and judgment of the district court of Cochise county are not against the law.

10th. In holding and deciding that the findings of the district court of Cochise county support the judgment.

11th. In refusing to hold that there is a fatal variance between the findings of fact and conclusions of law.

12th. In refusing to hold that the findings of fact in the district court of Cochise county are outside of the issues made by the pleadings.

13th. In holding and deciding that the evidence in the trial court below supports the finding that plaintiff was at the commencement of the action, or was at the time of the trial, the owner of every part and parcel of the land described in the complaint.

14th. In holding and deciding that the finding of the district court of Cochise county that appellants were in possession for ten years prior to the bringing of the action by appellee was insufficient as a bar to appellee's recovery.

15th. In holding and deciding in effect that the judgment of the court below against the appellants for the rents and profits of
133 the land withheld by them by appellee follows the findings as to such rents and profits.

16th. In holding and deciding in effect that the district court of Cochise county ruled correctly in refusing to grant appellants a new trial.

Wherefore, appellants pray that this honorable court examine and correct the errors assigned and for a reversal of the judgment and decree of the supreme court of the Territory of Arizona in all things.

BEN GOODRICH,
Attorney for Appellants.

(Endorsed:) No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis *et al. vs.* Boquillas Land & Cattle Co. Assignment of errors. Filed April 25, 1904, S. M. Cullom, clerk.

134 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS, H. C. HERRICK, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray and Peter Crane, *et al.*, Appellants, *vs.* BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.	Statement of Facts in the Nature of a Special Verdict on Appeal to the Supreme Court of the United States.

The supreme court of the Territory of Arizona being in regular session and hearing the above entitled cause on appeal from the dis-

trict court of the second judicial district of the Territory of Arizona in and for the county of Cochise, makes and certifies the following statement of facts of said case in the nature of a special verdict.

The findings of fact are as follows:—

This cause coming on regularly to be heard on the — day of June, 1902, before the court sitting without a jury, (a trial by jury having been expressly waived by the respective parties,) Messrs. English & Bowman, appeared as attorneys for the plaintiff, and Ben Morgan, Esq., appeared as attorney for the defendants answering, others of the defendants having defaulted and others thereof having filed their disclaimers herein; the case proceeded to trial; witnesses were duly sworn and testified, and documentary evidence in-
135 troduced and filed for and in behalf of the respective parties; and the evidence being concluded the cause was argued by respective counsel, and submitted to the court for its consideration and decision. Whereupon, the court took the matter under advisement, and now on this the 23d day of June, 1902, the court being fully advised as to the law and the evidence aforesaid, finds the following facts:

That all of the defendants named and mentioned in the plaintiff's complaint herein were personally served with summons and complaint herein, within this Cochise county; and that the premises, the subject of this suit, are situated within this Cochise county; that the defendants, James Herrick, P. A. De Martini, Elijah Clifford, Antonio Zamora, George G. McGee, Carmen Zamora, Frank Wild, Ben Heney, P. A. De Martini & Co., have filed disclaimers herein to the property sued for, and each and every part and portion thereof, and that the defendants, Frank Joeger, Charles La Brosse, Leandro Rodriguez, Miguel Valenzuela, Dolores Padia, Carmen Zamora, Nicanoro Ochoa, A. V. Noyes, H. C. Herrick, Kate Harrington, Peter Crane, Joseph Curtis, Samuel Curtis, W. S. Gray, Leon Larrieu, Wong Fook Ling, Charley Wong, filed their answers in writing herein, and that all of the other defendants herein, not so disclaiming or answering, have failed to appear and answer plaintiff's complaint, their default for not so appearing or answering was duly entered, after their time for so doing had long since expired.

136 That for more than one year last past, the plaintiff has been and still and now is a corporation duly organized and existing under and by virtue of the State of California, authorized to do business and doing business in Cochise county, Territory of Arizona, and having a duly authorized legal agent residing therein.

That on the 8th day of May, A. D. 1833, the Mexican government, by good and sufficient grant conveyed to plaintiff's grantors and predecessors in interest the lands and premises herein described, being the lands and premises in controversy.

That on the 14th day of December, in the year of our Lord, one thousand nine hundred, the Government of the United States, by its letters patent, recognized and confirmed the validity of the said

grant of lands in plaintiff's complaint, and hereinafter particularly described, to Ygnacio Elias Gonzales and Nepumoceno Felix, and to their heirs, successors in interest and assigns forever; and found and decreed that W. R. Hearst and Phebe A. Hearst had acquired an undivided interest in such lands and premises of the said two grantees.

That on the 3rd day of July 1901, the said W. R. Hearst and Phebe A. Hearst, by deed in writing, conveyed all of their said interest in and to the said lands and premises to the plaintiff herein, and that plaintiff has not since disposed of its title so acquired, or any part thereof, to said lands and premises.

137 That each and every of said defendants in this cause were, on the 14th day of December, 1900, and had been for more than ten years next preceding that date, occupying various portions of the said lands and premises, and each and every of the said defendants who so answered herein, and also those of said defendants who have failed to appear and answer herein, have since the last named date withheld possession of divers portions of said lands and premises from the plaintiff and its grantors and predecessors in interest, and still and now, so withhold the same; that since the said December 14, 1900, the annual value of the rents, issues and profits of that part of said lands and premises so withheld from plaintiff, by the said defendants, is as follows, to-wit:

By the defendant, Charles Labrosse, the sum of.....	$400.00
By the defendant, A. V. Noyes, the sum of.....	400.00
By the defendant, Peter Crane, the sum of.....	450.00
By the defendant, W. S. Gray, the sum of.....	500.00
By the defendant, H. C. Herrick, the sum of.....	700.00
By the defendant, Frank Joeger, the sum of.....	100.00
By the defendant, Leon Larrieu, the sum of.....	50.00

And now, as conclusions of law, from the foregoing facts, the court now hereby finds and decides that, this court has jurisdiction of the parties and subject matter herein.

That all the material allegations of the plaintiff's com-
138 plaint are sustained by evidence free from objection as to its competency, relevancy, admissibility and sufficiency, except as limited by the facts especially found herein.

That plaintiff and its predecessors and grantors in interest have been since the first day of January, 1875, and ever since *has* been, and still *is*, the owners and entitled to the possession of the lands and premises in plaintiff's complaint, and hereinafter particularly described, and each and every part and portion thereof. That none of the defendants are entitled to possession of said lands and premises, or any part or portion thereof, and that plaintiff is entitled to the immediate possession of the whole of said lands and premises, and to a writ of possession thereunder; and also to its costs herein expended, hereby taxed at — dollars, which costs shall be taxed against

all of the defendants, except those who have filed their disclaimers herein, and plaintiff shall also have judgment for the rents, issues and profits of said premises in accordance with the facts as found herein, for all of which let judgment be entered, and the appropriate writ of possession and writ of execution issue.

The said lands and premises in the complaint herein mentioned and described, and hereinbefore referred to, are described as follows, to-wit:

That certain grant of land known as, designated and called the San Juan de los Boquillas y Nogales, situated in Cochise county, Territory of Arizona, the exterior boundaries of which are as
139 follows: Beginning at the initial monument number one, about one mile east of the New Mexico and Arizona Railroad bridge, which crosses the San Pedro river at the town of Fairbank, in said county, and running thence north fifteen degrees thirty-nine minutes west 27,286 feet to a rock chiseled △ 2; thence north 1 deg. 58′ east 12,655 feet to a rock chiseled △ 3; thence north 88 deg. 2′ west 10,090 feet to a corner rock chiseled △ 4; thence south 1 deg. 58′ west 14,20[illegible] to a rock chiseled △ 5; thence south 15 deg. 39′ east 28,340 feet to a rock chiseled △ 6; thence south 10 deg. 2′ east 33,434 feet to a rock chiseled △ 7; thence north 79 deg. 58′ east 10,090 feet to a rock chiseled △ 8; thence north 10 deg. west 33927 feet to the place of beginning, and containing 17,355.86 acres of land, be the same more or less.

Dated this June 23rd, A. D. 1902.

FLETCHER M. DOAN, Judge.

(Endorsed:) Filed June 23rd, A. D. 1902. Geo. B. Wilcox, clerk.

Dated this — of May, A. D. 1904.

RICHARD E. SLOAN,
Associate Justice, Supreme Court of the
Territory of Arizona.

(Endorsed:) Service admitted this 15th day of June, 1904, with all rights, objections and exceptions to the time of service and to jurisdiction of court and to correctness of statement of facts reserved expressly. Francis J. Heney, att'y for appellee. No. 796. Sup. ct. Arizona. Joseph Curtis *et al. v.* Boquillas Land & Cattle Co. Copy statement of facts &c. on appeal. Filed July 11, 1904, S. M. Cullom, clerk. By Angie B. Parker, deputy.

140 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. Gray, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodriges, Delores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valensuela, Ben Heney, Wong Fook Ling, Charley Wong, Appellants,
vs.
BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.
} Bond.

Know all men by these presents: That we, H. C. Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray and Peter Crane, as principals, and C. L. Cummings and F. N. Wolcott as sureties, are held and firmly bound unto The Boquillas Land & Cattle Company, a corporation, appellee, in the full and *joint* sum of one thousand ($1000.00) dollars lawful money of the United States to be paid them, the said obligees herein, for the payment of which well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally firmly by these presents.

Sealed with our seals and dated this 25th day of April, A. D. 1904.

141 Whereas, the above named principals, H. C. Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray and Peter Crane have prosecuted an appeal to the Supreme Court of the United States, the same having been duly and properly allowed from a final judgment made, rendered and entered against them and in favor of said obligees herein in the supreme court of the Territory of Arizona, to reverse the judgment rendered in said court.

Now, therefore, the condition of this obligation is such, that if the above named principals and obligees herein shall prosecute their said appeal to effect and answer for all damages and costs if they fail to make said appeal good, then this obligation shall be void, otherwise the same shall be and remain in full force and virtue.

L. LARRIEU.
A. V. NOYES.
P. B. CRANE,
JAMES L. HERRICK,
Administrator of the Estate of H. C. Herrick.
CHARLEY LABROSSE.
J. N. CURTIS.
C. L. CUMMINGS.
F. N. WOLCOTT.

142 TERRITORY OF ARIZONA, County of ——, } ss:

C. L. Cummings and F. N. Wolcott being residents of the county of Cochise, Territory of Arizona, being by me first duly sworn on their several oaths, each for himself states: That they are the sureties in the above and foregoing bond, that after paying their just debts and liabilities they are each worth $1000.00 in real and personal property within the jurisdiction of said court and subject to execution and levy and that is not exempt from execution.

F. N. WOLCOTT.
C. L. CUMMINGS.

Subscribed and sworn to before me this 25 day of April, 1904.

LEE O. WOOLERY,
[SEAL.] Notary Public.

My commission expires Jan. 12, 1907.

The within bond is approved this 15th Aug. 1904.

RICHARD E. SLOAN,
Associate Justice.

(Endorsed:) No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al.* *vs.* Boquillas Land & Cattle Co. Cost bond on appeal. Filed July 11, 1904. S. M. Cullom, clerk. By Angie B. Parker, deputy.

143 In the Supreme Court of the Territory of Arizona.

JOSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. GRAY, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodrigues, Delores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valenzuela, Ben Heney, Wong Fook Ling, Charley Wong, Appellants,

vs.

BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.

Know all men by these presents: That we, Leon Larrieu as principal, and Frank Payla and J. B. Miano as sureties, are held and firmly bound unto Boquillas Land & Cattle Company, a corporation, in the full and just sum of $225.00 to be paid to Boquillas Land & Cattle Company, its certain attorneys, successors or assigns, to which

payment well and truly to be made we bind ourselves, our heirs, executors and administrators jointly and severally by these presents.

Sealed with our seals and dated this 18th day of May, A. D., 1904.

Whereas, on March 26th, 1904, at a term of the supreme court in and for the Territory of Arizona, in a suit pending in said
144 court between H. C. Herrick, Charles Labrosse, W. S. Gray, A. V. Noyes, Leon Larrieu and Peter Crane, appellants, *v.* Boquillas Land & Cattle Company, appellee, a final judgment and decree was rendered against the said H. C. Herrick, Charles Labrosse, W. S. Gray, A. V. Noyes, Leon Larrieu and Peter Crane; and

Whereas, said judgment and decree against said Leon Larrieu is separate and severable from the judgment against the other appellants herein named, and said Leon Larrieu has applied for and obtained a supersedeas and has obtained an appeal and filed a copy thereof in the clerk's office of said supreme court of the Territory of Arizona to reverse the judgment and decree in the aforesaid suit, and a citation directed to the Boquillas Land & Cattle Company citing and admonishing it to appear at a session of the Supreme Court of the United States to be held at the city of Washington on the — day of ——, next.

Now, the condition of the above obligation is such, that if the said Leon Larrieu shall prosecute his appeal to effect and answer all damages and costs, if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

L. LARRIEU. [SEAL.]
FRANK PAYLA. [SEAL.]
J. B. MIANO. [SEAL.]

Sealed and delivered in presence of

—— ——.

145 Approved by associate justice of the supreme court of the Territory of Arizona.

RICHARD E. SLOAN,
Associate Justice, Supreme Court,
Territory of Arizona.

TERRITORY OF ARIZONA, County of Cochise, } *ss:*

Frank Payla and J. B. Miano being residents of the county of Cochise, Territory of Arizona, being by me first duly sworn on their several oaths, each for himself states: That they are the sureties in the above and foregoing bond; that after paying their just debts and liabilities they are each worth $225.00 in real and personal property within the jurisdiction of said court and subject to execution and levy and that is not exempt from execution.

L. LARRIEU.
FRANK PAYLA.
J. B. MIANO.

Subscribed and sworn to before me this 18th day of May, 1904.

LEE O. WOOLERY,
Notary Public.

[SEAL.]

My commission expires Jan. 12, 1907.

(Endorsed:) No. 796. In the supreme court of the Territory of rizona. Joseph Curtis *et al. vs.* Boquillas Land & Cattle Co. ond of Leon Larrieu. Filed July 11, 1904. S. M. Cullom, clerk. y Angie B. Parker, deputy.

16 In the Supreme Court of the Territory of Arizona.

OSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. GRAY, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodrigues, Delores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valensuela, Ben Heney, Wong Fook Ling, Charley Wong, Appellants,

vs.

OQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.

Know all men by these presents: that we, Peter Crane as prinpal, and F. N. Wolcott and C. L. Cummings as sureties, are held and mly bound unto Boquillas Land & Cattle Company, a corporaon, in the full and just sum of $2025.00 to be paid to Boquillas nd & Cattle Company, its certain attorneys, successors or assigns, which payment well and truly to be made we bind ourselves, our irs, executors and administrators jointly and severally by these esents.

Sealed with our seals and dated this 25th day of May A. D. 1904.

Whereas, on March 26th, 1904, at a term of the supreme court in and for the Territory of Arizona, in a suit pending in 7 said court between H. C. Herrick, Charles Labrosse, W. S. Gray, A. V. Noyes, Leon Larrieu and Peter Crane, appellants, Boquillas Land & Cattle Company, appellee, a final judgment and cree was rendered against the said H. C. Herrick, Charles Losse, W. S. Gray, A. V. Noyes, Leon Larrieu and Peter Crane; and Whereas, said judgment and decree against said Peter Crane is parate and severable from the judgment against the other appelts herein named, and said Peter Crane has applied for and obned a supersedeas and has obtained an appeal and filed a copy reof in the clerk's office of said supreme court of the Territory of izona to reverse the judgment and decree in the aforesaid suit, d a citation directed to the Boquillas Land & Cattle Company ing and admonishing it to appear at a session of the Supreme

Court of the United States to be held at the city of Washington on the — day of ——, next.

Now, the condition of the above obligation is such, that if the said Peter Crane shall prosecute his appeal to effect and answer all damages and costs, if he fails to make his plea good, then the above obligation to be void, else to remain in full force and virtue.

PETER CRANE. [SEAL.]
F. N. WOLCOTT. [SEAL.]
C. L. CUMMINGS. [SEAL.]

Sealed and delivered in presence of
—— ——.

148 Approved by associate justice of the supreme court of the Territory of Arizona.

RICHARD E. SLOAN,
Associate Justice Supreme Court, Territory of Arizona.

TERRITORY OF ARIZONA, }
County of Cochise, } ss:

F. N. Wolcott and C. L. Cummings being residents of the county of Cochise, Territory of Arizona, being by me first duly sworn on their several oaths, each for himself states: That they are the sureties in the above and foregoing bond; that after paying their just debts and liabilities they are each worth $2025.00 in real and personal property within the jurisdiction of said court and subject to execution and levy and that is not exempt from execution.

F. N. WOLCOTT.
C. L. CUMMINGS.

Subscribed and sworn to before me this 25th day of May, 1904.

[SEAL.] E. G. SHEPARD,
Notary Public.

My commission expires Dec. 16th, 1906.

(Endorsed:) No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis, *et al. vs.* Boquillas Land & Cattle Co. Bond of Peter Crane. Filed July 11, 1904. S. M. Cullom, clerk. By Angie B. Parker, deputy.

149 In the Supreme Court of the Territory of Arizona.

Be it remembered that heretofore and on to-wit the 31st day of October A. D., 1902, the same being one of the regular juridical days of the October term, A. D. 1902 of said court, the following order, *inter alia*, was had and entered of record in said court, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
OQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

It is ordered by the court that the appellee herein be granted enty days from this day in which to file brief, and
It is further ordered that appellants herein be granted ten days ereafter in which to file reply brief.

And afterwards and upon to-wit the 13th day of January A. D., 03, the same being one of the regular juridical days of the Janu- y term A. D., 1903, of said court, the following order, *inter atia*, s had and entered of record in said court in said cause, which d order is in words and figures, as follows, to-wit:

0 JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

It is ordered that the hearing of this cause be set for January th, 1903, on oral argument.

And afterwards and upon to-wit the 14th day of January, A. D., 03, the same being one of the regular juridical days of the Janu- y term, A. D., 1903, of said court, the following order *inter alia*, s had and entered of record in said court in said cause, which d order is in words and figures as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, Appellee. } No. 796.

This cause coming on for hearing was argued by Ben Morgan, q., for appellants, and Allen R. English, Esq., for appellee, and ıse ordered submitted.

And afterwards and upon to-wit the 20th day of March, A. D., 03, the same being one of the regular juridical days of the Janu- ary term, A. D., 1903, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, wit:

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

This cause having been heretofore submitted and by the court taken under consideration and the court having considered the same and being fully advised in the premises: It is ordered that the judgment of the trial court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed, that the appellee herein do have and recover of and from Joseph Curtis, Samuel Curtis, W. S. Gray, —— Wills, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Peter Crane, John Gephart, Leon Larrieu, Entimio Acuna, Joe Escaig, Leandro Rodriges, Dolores Padia, Nicanor Ochoba, Mrs. Kate Harrington, Miguel Valensuela, Wong Fook Ling, and Charley Wong, appellants herein, and F. N. Wolcott and W. K. King, sureties on appeal bond, its costs in this court, taxed at — dollars, and its costs in the court below in this cause incurred, taxed at one hundred thirty-seven and 30/100 ($137.30) dollars, and have execution therefor.

152 And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

Webste Street, Esq., for appellants herein, in open court, gave notice of appeal from the judgment of this court to the Supreme Court of the United States, and prayed for an allowance of such appeal, whereupon it was ordered by the court that an appeal be granted as prayed for to the Supreme Court of the United States from the order and judgment of this court, upon said appellants filing with the clerk of this court a bond in the sum of one thousand ($1,000.) dollars, and the remittitur stayed for sixty days.

And afterwards and upon to-wit the 23rd day of May, A. D. 1903, the same being one of the regular juridical days of the January term, A. D., 1903, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

153 JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

It is ordered that the motion for re-hearing filed herein by appellants, be submitted.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

It is ordered that the motion for re-hearing filed herein by appellants, and heretofore submitted, be and the same is hereby granted.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

154 JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

In this cause it is ordered that the name of Ben Morgan be stricked from appellants' brief, and the name of Ben Goodrich inserted in lieu thereof.

And afterwards and upon to-wit the 11th day of January A. D. 1904, the same being one of the regular juridical days of the January term, A. D. 1904, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

Comes now Ben Goodrich, Esq., attorney for appellants herein, and moves the court to submit this cause on briefs.

On motion of Francis J. Heney, Esq., attorney for appellee herein, it is ordered that time for argument of this cause be granted.

It is further ordered that this cause be passed.

155 And afterwards and upon to-wit the 12th day of January A. D., 1904, the same being one of the regular juridical days of the January term, A. D., 1904, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

Comes now Francis J. Heney, Esq., attorney for appellee herein, and moves the court that this cause be heard the first thing tomorrow morning, January 13th, 1904.

It is ordered that said motion be denied.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

156 It is ordered that the hearing of this cause be set for January 13th, 1904.

And afterwards and upon to-wit the 13th day of January A. D., 1904, the same being one of the regular juridical days of the January term, A. D., 1904, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

On motion of Francis J. Heney, Esq., it is ordered that his name be entered of record as attorney for appellee.

On motion of Francis J. Heney, Esq., attorney for appellee herein, it is ordered that he be granted five days in which to file brief.

On motion of Ben Goodrich, Esq., attorney for appellants herein; it is ordered that he be granted five days thereafter in which to file reply brief.

This cause coming on for hearing was argued by Ben Goodrich, Esq., for appellants and F. J. Heney, Esq., for appellee, and cause ordered submitted.

157 And afterwards and upon to-wit the 26th day of March A. D. 1904, the same being one of the regular juridical days of the January term, A. D. 1904, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

This cause having been heretofore submitted and by the court taken under consideration and the court having considered the same and being fully advised in the premises: It is ordered that the judgment of the district court be and the same is hereby affirmed.

It is further ordered, adjudged and decreed that the appellee herein do have and recover of and from Joseph Curtis, Samuel Curtis, W. S. Gray, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Peter Crane, John Gephart, Leon Larrieu, Entimio Acuna, Joe Escaig, Leandro Rodriges, Dolores Padia, Nicanor Ochoba, Mrs. Kate Harrington, Miguel Valenzuela, Wong Fook Ling, and Charley Wong, appellants herein, and F. N. Wolcott and W. K. King, sureties on appeal bond,
158 its costs in this court taxed at forty-three and 45/100 ($43.45) dollars, and its costs in the court below in this cause incurred, taxed at one hundred thirty-seven and 30/100 ($137.30) dollars, and have execution therefor.

And afterwards and upon to-wit the same day the following other order was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

In this cause Ben Goodrich, Esq., attorney for appellants, in open court gave notice of appeal from the judgment of this court, to the Supreme Court of the United States, and moved the court that the appeal be allowed, and that it fix the amount of the cost bond on appeal, whereupon the court ordered that the appeal be alloved, and

It is further ordered that the amount of the bond on appeal be fixed in the sum of one thousand ($1,000.) dollars.

On motion of Ben Goodrich, Esq., for appellants, it is ordered that they be granted thirty days within which to file statement of facts.

159 And afterwards and upon to-wit the 7th day of May, A. D. 1904, the same being one of the regular juridical days of the January term, A. D., 1904, of said court, the following order, *inter alia*, was had and entered of record in said court in said cause, which said order is in words and figures, as follows, to-wit:—

JOSEPH CURTIS ET AL., Appellants,
vs.
BOQUILLAS LAND AND CATTLE COMPANY, a Corporation, Appellee. } No. 796.

Comes now Ben Goodrich, Esq., attorney for appellants herein, and moves the court that it fix the amount of the cost bond on appeal;

It is ordered by the court that this matter be taken up in chambers.

160 Clerk's Certificate.

UNITED STATES OF AMERICA, Territory of Arizona, } ss:

I, Shelby M. Cullom, clerk of the supreme court of the Territory of Arizona, do hereby certify that the foregoing pages, numbered from 1 to 159, inclusive, contain a true and complete transcript of the record and proceedings had in said court, in the case of Joseph Curtis *et al.*, appellants, *vs.* Boquillas Land and Cattle Company, a corporation, appellee, as the same remain of record and on file in said office.

Also that the citation attached hereunto is the original citation issued by said supreme court of the Territory of Arizona.

Seal Supreme Court of Arizona.

In testimony whereof, I have hereunto subscribed my name and affixed the seal of the said supreme court, at Phœnix, Arizona, this 23rd day of September, 1904.

SHELBY M. CULLOM,
Clerk Supreme Court of Arizona.

161 In the Supreme Court of the United States.

JOSEPH CURTIS, SAMUEL CURTIS, ELIJAH CLIFFORD, W. S. GRAY, —— Willis, Charles Labrosse, Frank Joeger, A. V. Noyes, Charles Noyes, Miles Noyes, H. C. Herrick, Jim Herrick, Frank Wild, Peter Crane, John Gephart, P. A. Demartini & Co., George McGee, Leon Larrieu, Antonio Zamora, Carmen Zamora, Eutimio Acuna, Joe Escaig, Liandro Rodriges, Delores Padia, Nicanor Ochoba, Mrs. Kate Harington, Miguel Valensuela, Ben Heney, Wong Fook Ling, Charley Wong, Appellants,

vs.

BOQUILLAS LAND & CATTLE COMPANY, a Corporation, Appellee.

Citation.

The United States of America to Boquillas Land & Cattle Company, a corporation, Greeting:

You are hereby cited and admonished to be and appear at the session of the Supreme Court of the United States to be holden in the city of Washington, District of Columbia, on the 25 day of June, 1904, pursuant to an appeal duly allowed by the Honorable Edward Kent chief justice of the supreme court of the Territory of Arizona on the 25th day of April, 1904, and duly filed with the clerk of said court, from a judgment rendered in the said supreme court of the Territory of Arizona on the 26th day of March, 1904, in an action on appeal to that court, wherein you were appellee and H. C.
162 Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu W. S. Gray and Peter Crane were appellants, to show cause, if any there be, why the said judgment rendered against the said appellants and in your favor, should not be set aside, reversed, corrected, and why speedy justice should not be done to the parties in whose behalf the said appeal is allowed.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 25th day of April, A. D. 1904.

[Seal Supreme Court of Arizona.]

EDWARD KENT,
Chief Justice of the Supreme Court
of the Territory of Arizona.

163 [Endorsed:] No. 796. In the supreme court of the Territory of Arizona. Joseph Curtis *et al. vs.* Boquillas Land & Cattle Company. Citation. Filed May 2, 1904 S. M. Cullom, clerk.

Service of the within citation at Tombstone, Arizona, this 29th day of April, A. D. 1904.

ALLEN R. ENGLISH,
Att'y for Appellee.

Endorsed on cover: File No. 19,483. Arizona Territory supreme court. Term No. 383. H. C. Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray, and Peter Crane, appellants, *vs.* Boquillas Land & Cattle Company. Filed October 7th, 1904. File No. 19,483.

FILE COPY.

FILED
MAR 23 1905
JAMES H. McKENNEY,
Clerk.

APPELLANT'S BRIEF

Supreme Court of the United States

OCTOBER TERM, 1904

No. ~~283~~ 105.

H. C. HERRICK, A. V. NOYES, CHARLES LABROSSE, LEON LARRIEU, W. S. GRAY and PETER CRANE, Appellants,

vs.

BOQUILLAS LAND & CATTLE COMPANY, Appellee.

On Appeal From the Supreme Court of the Territory of Arizona.

FILED_____

(19,483)

BEN GOODRICH,
Attorney for Appellants.

Supreme Court of the United States

OCTOBER TERM, 1904

No. 383

H. C. HERRICK, A. V. NOYES, CHARLES LABROSSE, LEON LARRIEU, W. S. GRAY and PETER CRANE, Appellants,

vs.

BOQUILLAS LAND & CATTLE COMPANY, Appellee.

BRIEF FOR APPELLANTS.

On Appeal From the Supreme Court of the Territory of Arizona.

STATEMENT OF THE CASE.

This is an action in ejectment brought in the District Court of Cochise County, Arizona, by the Boquillas Land & Cattle Company against the defendants and others to recover possession of 17,355.86 acres of land known as the "Boquillas Land Grant."

Plaintiff, among other things, alleges in its complaint that on the 1st day of January, 1875, the plaintiff, its grantors and predecessors in interest, were, and ever since have been, and now are, the owners of the land; and on the 28th of November, 1900, the defendants entered into the possession of said premises and dispossessed plaintiff, and now unlawfully withhold the possession thereof to its damage in the sum of $10,000.00. Alleges the annual value of the rents, issues and profits to be $10,000.00, and prays judgment for possession and for the damages alleged.

Defendants answering, deny the allegations of the

(Endorsed): Filed June 23rd, A. D. 1902.
Dated this ..... of May, A. D. 1904.

RICHARD E. SLOAN,
Associate Justice, Supreme Court of the Territory of Arizona.

(Trans. of Rec., pp. 66-69.)

ASSIGNMENT OF ERRORS.

Defendants assign for error:

1st. That the Supreme Court of the Territory of Arizona erred in holding and deciding that the record of the District Court of Cochise County on appeal to the Supreme Court of the Territory of Arizona, was insufficient as a basis for any review of the case.

2nd. In holding and deciding that the record from the District Court of Cochise County to the Supreme Court of the Territory presented no matter which said Supreme Court could consider except the one question as to whether the pleadings supported the judgment.

3rd. In holding and deciding that the judgment of the Supreme Court of the Territory of Arizona followed the findings of the District Court of Cochise County.

4th. In holding and deciding that the findings of the District Court of Cochise County that plaintiff and its grantors had been the owners and entitled to the possession of the land sued for since the 1st day of January, 1875, and that appellants have since the 14th day of December, 1900, withheld possession from plaintiff and its grantors, and continued to so withhold the same without specifically finding an ouster of plaintiff by any of the defendants was sufficient to support the judgment.

5th. In holding and deciding that the question whether the evidence was sufficient to establish the ownership of the lands in question in the appellee, and the question whether the appellants had shown

peaceable and adverse possession under the statute of limitations set up in their answer was not presented in the record of the District Court of Cochise County, and could not be considered by the Supreme Court of the Territory of Arizona.

6th. In holding and deciding that no error appeared upon the face of the record presented to the Supreme Court of the Territory of Arizona.

7th. In affirming the judgment of the District Court of Cochise County, and of not reversing the judgment of the District Court of Cochise County, and granting appellants a new trial.

8th. In holding and deciding that the evidence supported the findings and judgment of the District Court of Cochise County.

9th. In holding and deciding that the findings and judgment of the District Court of Cochise County are not against law.

10th. In holding and deciding that the finding of the District Court of Cochise County supports the judgment.

11th. In refusing to hold that there is fatal variance between the findings of fact and conclusions of law.

12th. In refusing to hold that the findings of fact in the District Court of Cochise County are outside of the issues made by the pleadings.

13th. In holding and deciding that the evidence in the trial court below supports the finding that plaintiff was at the commencement of the action, or was at the time of the trial, the owner of every part and parcel of the land described in the complaint.

14th. In holding and deciding that the finding of the District Court of Cochise County that appellants were in possession for ten years prior to the bringing of the action by appellee was insufficient as a bar to appellee's recovery.

15th. In holding and deciding in effect that the

judgment of the court below against the appellants for the rents and profits of the land withheld by them by appellee follows the findings as to such rents and profits.

16th. In holding and deciding in effect that the District Court of Cochise County ruled correctly in refusing to grant appellants a new trial.

WHEREFORE, appellants pray that this Honorable Court examine and correct the errors assigned and for a reversal of the judgment and decree of the Supreme Court of the Territory in all things.

(Trans. of Rec., p. 65-6. Fols. 130-134.)

ARGUMENT.

The Supreme Court of Arizona Territory affirmed the judgment of the lower court on the ground that there was no bill of exceptions and no statement of facts, or transcript of evidence in the record, and that nothing was presented which that court could consider except the one question as to whether the pleadings support the judgment. (Trans. of Record, page 51. Fols. 101-2.)

By section 1464 of the Revised Statutes of Arizona of 1901, it is provided "that where the ruling or other action of the court appears otherwise of record, no bill of exceptions shall be necessary to reserve an exception thereto."

In this case there were findings of fact, conclusions of law and a judgment made by the court, and they certainly are a part of the record in the case and should be considered.

The only purpose of a bill of exceptions is to make something to appear of record, which, without it, would not appear.

> Maricopa County vs. Rosson, 40 Pac., 314.
> Weeks vs. Gold Mining Co., 73 Cal., 603.

And this court has held in the case of County of Apache vs. Barth, 177 U. S., page 542, that it must

examine the findings of fact made by the court of the Territory to ascertain whether they support the judgment, and in Fox vs. Haarstick, 156 U. S., 674, that it would review questions of practice under local law from a Territorial Supreme Court.

The findings then being a matter of record, the question presented is whether or not the conclusions of law made by the Judge of the District Court, are consistent with and supported by the findings of fact, and whether the judgment follows those findings, and is supported by them.

The Supreme Court adopted the findings of the lower court and found, among other things, that on May 8th, 1833, the Mexican Government, by good and sufficient grant, conveyed to plaintiff's grantors and predecessors in interest the premises in controversy.

That on December 14th, 1900, the United States Government, by its patent, recognized and confirmed the validity of said grant by the Mexican Government, and found and decreed that W. R. Hearst and Phoebe A. Hearst had acquired an undivided interest in such lands and premises of the Mexican grantees; that each and every one of defendants were on the 14th of December, 1900, and had been for more than ten years next preceding that date in the occupation of various portions of said lands and withheld possession from plaintiff, and still withholds possession; that plaintiff and its grantors and predecessors in interest have been since January 1st, 1875, and ever since said date and still are the owners and entitled to the possession thereof.

This finding is inconsistent with the finding to the effect that the Government of Mexico conveyed the land as early as May 8th, 1833. The suit was filed August 26th, 1901, so it appears that defendants were in possession, occupying the land adversely and continuously to plaintiff's claim, for about ten and a half years before the suit was filed.

The stipulated evidence is, that the defendants and each of them, their grantors and predecessors

in interest, had been in the actual possession and occupancy of the lands occupied by them for more than ten years continually next before the commencement of this action, and that during all of that time they had never in any manner recognized the title to the lands in controversy to be in plaintiff, or its grantors or predecessors in interest. (Trans. of Record, p. 5. Folio 11.)

In United States vs. Pendle, 185 U. S., 200, and in United States vs. Chaves, 159 U. S., 452, it is held that uninterrupted possession for a period of time required by statute presumes a grant, and that even a fraudulent or wrongful possession does not avoid a statute.

And in Toltec Ranch Co. vs. Cook, 191 U. S., 532, this court decided that the limitation began to run from the completion of the grant (which in this case would be May 8th, 1833), and not from the issuance of the patent. See, also:

Desert Salt Co. vs. Tarpy, 142 U. S., 241.
Joplin vs. Chachere, 192 U. S., 94.

But it is contended by appellee, and was so held by the Supreme Court of the Territory, that the ten years statute of limitations does not apply, for the reason that it is prospective and not retrospective in its effect, and the court cites the cases of Sohn vs. Waterson, 17 Wall., 596; Terry vs. Anderson, 95 U. S., 632, and other cases from the state courts.

It will be remembered that in this case there was more than simple possession for more than ten and a half years. Besides the lapse of time, there were acts done and other circumstances which would warrant the court, as a matter of general jurisprudence, to presume a grant. See:

U. S. vs. Pendle, 185 U. S., 200.
U. S. vs. Chaves, 159 U. S., 452.
1st Greenleaf's 12 Ed., Section 17.

The theory of appellees' case in the court below, was that the statute of limitations began to run only upon the confirmation of the grant by the issuance

of the United States patent. We have seen that this is not the rule.

Toltec Ranch Co. vs. Cook, supra.

But is it true that the ten years statute of limitations of Arizona plead by defendants are prospective only in their effect?

This court in the Sohn case say: "A statute of limitations may undoubtedly have effect upon actions which have already accrued, as well as upon actions which may accrue after its passage. Whether it does so or not will depend upon the language of the act and the apparent intent of the Legislature to be gathered therefrom. When a statute declares generally that no action of a certain class shall be brought except within a certain limited time after it shall have accrued, the language of the statute would make it apply to past actions as well as those arising in the future."

17th Wall., 599.

Paragraph 2938 Revised Statutes of Arizona, 1901, is a statute of precisely this character, and applies to all actions which have accrued prior to the passage of the law as well as those that accrue after its passage, and brings the case at bar strictly within the rule laid down in the Sohn case.

That case, and others relied upon by the Supreme Court of Arizona, lays down the rule that is applicable where the Legislature has undertaken to shorten the period fixed by a previous statute of limitations without giving the party complaining a reasonable time within which to bring his action.

Here no vested rights were impaired or interfered with, and the question of unreasonableness of time cuts no figure. To the same effect is Terry vs. Anderson cited, supra, and that it is competent for the Legislature to pass such laws is settled by numerous authorities.

Jackson vs. Lamphire, 3 Peters, 280.
Freeborn vs. Smith, 2 Wall., 174.

complaint, and allege possession in them and in their predecessors in interest for more than twenty (20) years prior to the beginning of the suit within the boundaries of the land described in the complaint continually down to the filing of the answer, and allege uninterrupted, sole, exclusive and actual seizing and possession of said premises, and every part thereof, claiming to have and hold same as sole and exclusive owners in fee simple, and that during the whole of that time they have been in the sole and exclusive receipt and enjoyment of the rents, issues, profits, etc., claiming to be of right entitled to receive and enjoy the same, and without having paid over or accounted for to the plaintiff or any person under whom it claims to derive title for any part of such rents, issues, profits, etc., and without having at any time or manner possessed said premises, or any part thereof, or any rents, issues or profits arising out of the same in common with or as trustee for plaintiff, or any other person under whom it claims to derive title, and without ever having acknowledged or admitted that defendants, or either of them, were bound in law or equity to pay over or account for any such rents, issues and profits to plaintiff, or any one under whom it claims title. (Trans. of Record, pages 1 and 2, Fols. 1 to 4.)

The answer also sets up that during the time they were in possession, they had reclaimed portions of said land from waste to arable, constructed ditches for the conveyance of water for irrigating purposes, built dwelling houses, barns and outhouses, and placed improvements upon each parcel owned and possessed by them respectively of over the value of $70,000.00. That the occupancy and possession and claim of ownership of said land and premises during all of said time, were well known to plaintiff and its grantors and predecessors in interest, and that no demand was ever made by it or them upon defendants, or either of them, or their grantors in interest, for the possession of said land and premises, or for the rents, issues and profits of same.

The defendants further plead as a defense to the

action the five, three and two years statute of limitations of the Territory of Arizona. (Trans. of Record, pages 2 to 4, Fols. 4 to 8, inclusive.)

The case was tried to the court without a jury, and the court made its findings and rendered judgment in favor of plaintiff for the land described in its complaint, and for various sums of money as rental against the said several defendants. (Trans. of Record, pages 7 to 12. Fols. 15 to 26, inclusive.)

The defendants moved for a new trial on the grounds that the evidence does not support the findings and judgment; that said findings and judgment are against the law; that the court erred in rendering judgment in favor of plaintiff and against defendants; that the court erred in not rendering judgment for defendants; that the findings do not support the judgment entered. (Trans. of Record, page 4. Fol. 8.)

The motion was denied by the court, and stay of execution for sixty days granted, and notice of appeal given to the Supreme Court of the Territory in open court as required by statute. (Trans. of Record, page 7. Folio 14.)

The judgment of the District Court of Cochise County was affirmed by the Supreme Court of the Territory. (Trans. of Record, page 51. Fols. 100 to 104, inclusive.) Defendants filed a petition for rehearing, which was granted. (Trans. pages 53 to 59. Fols. 105 to 118, inclusive.) And the case was again affirmed by the Supreme Court of the Territory, and is now brought to this court on appeal for its decision. (Trans. pages 59 to 63. Fols. 119 to 128 inclusive.)

IN THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

Statement of Facts in the Nature of a Special Verdict on Appeal to the Supreme Court of the United States:

Title of Court and Cause.

The Supreme Court of the Territory of Arizona being in regular session and hearing the above entitled cause on appeal from the District Court of the Second Judicial District of the Territory of Arizona in and for the County of Cochise, makes and certifies the following statement of facts of said case in the nature of a special verdict.

The findings of fact are as follows:

This cause coming on regularly to be heard on the ..... day of June, 1902, before the court sitting without a jury (trial by jury having been expressly waived by the respective parties), Messrs. English & Bowman appeared as attorneys for the plaintiff, and Ben Morgan, Esq., appeared as attorney for the defendants answering, others of the defendants having defaulted and others thereof having filed their disclaimers herein; the case proceeded to trial; witnesses were duly sworn and testified, and documentary evidence introduced and filed for and in behalf of the respective parties; and the evidence being concluded the cause was argued by respective counsel, and submitted to the court for its consideration and decision. Whereupon, the court took the matter under advisement, and now, on this the 23rd day of June, 1902, the court being fully advised as to the law and the evidence aforesaid, finds the following facts:

That all of the defendants named and mentioned in the plaintiffs's complaint herein were personally served with summons and complaint herein, within this Cochise County; and that the premises, the subject of this suit, are situated within this Cochise County; that the defendants, James Herrick, P. A. DeMartini, Elijah Clifford, Antonio Zamora, George G. McGee,

Carmen Zamora, Frank Wild, Ben Heney, P. A. DeMartini & Co., have filed disclaimers herein to the property sued for, and each and every part and portion thereof, and that the defendants, Frank Joeger, Charles La Brosse, Leandro Rodriguez, Miguel Valenzuela, Dolores Padia, Carmen Zamora, Nicanoro Ochoa, A. V. Noyes, H. C. Herrick, Kate Harrington, Peter Crane, Joseph Curtis, Samuel Curtis, W. S. Gray, Leon Larrieu, Wong Fook Ling, Charley Wong, filed their answers in writing herein, and that all of the other defendants herein, not so disclaiming or answering, have failed to appear and answer plaintiff's complaint, their default for not so appearing or answering was duly entered, after their time for so doing had long since expired.

That for more than one year last past, the plaintiff has been, and still, and now is a corporation duly organized and existing under and by virtue of the State of California, authorized to do business and doing business in Cochise County, Territory of Arizona, and having a duly authorized legal agent residing therein.

That on the 8th day of May, A. D. 1833, the Mexican government, by good and sufficient grant, conveyed to plaintiff's grantors and predecessors in interest the lands and premises herein described, being the lands and premises in controversy.

That on the 14th day of December, in the year of our Lord one thousand nine hundred, the Government of the United States, by its letters patent, recognized and confirmed the validity of the said grant of lands in plaintiff's complaint, and hereinafter particularly described, to Ygnacio Elias Gonzales and Nepumoceno Felix, and to their heirs, successors in interest and assigns forever; and found and decreed that W. R. Hearst and Phebe A. Hearst had acquired an undivided interest in such lands and premises of the said two grantees.

That on the 3rd day of July, 1901, the said W. R. Hearst and Phebe A. Hearst, by deed in writing, conveyed all of their said interest in and to the said

lands and premises to the plaintiff herein, and that plaintiff has not since disposed of its title so acquired, or any part thereof, to said lands and premises.

That each and every one of said defendants in this cause were, on the 14th day of December, 1900, and had been for more than ten years next preceding that date, occupying various portions of the said lands and premises, and each and every one of said defendants who so answered herein, and also those of said defendants who have failed to appear and answer herein, have since the last named date withheld possession of divers portions of said lands and premises from the plaintiff and its grantors and predecessors in interest, and still and now, so withhold the same; that since the said December 14, 1900, the annual value of the rents, issues and profits of that part of said lands and premises so withheld from plaintiff, by the said defendants, is as follows, to-wit:

By the defendant, Charles LaBrosse, the sum of	$400.00
By the defendant, A. V. Noyes, the sum of	400.00
By the defendant, Peter Crane, the sum of	450.00
By the defendant, W. S. Gray, the sum of	500.00
By the defendant, H. C. Herrick, the sum of	700.00
By the defendant, Frank Joeger, the sum of	100.00
By the defendant, Leon Larrieu, the sum of	50.00

And now, as conclusions of law, from the foregoing facts, the court now hereby finds and decides that this court has jurisdiction of the parties and subject matter herein.

That all the material allegations of the plaintiff's complaint are sustained by evidence free from objection as to its competency, relevancy, admissibility and sufficiency, except as limited by the facts especially found herein.

That plaintiff and its predecessors and grantors in interest have been since the first day of January, 1875, and ever since has been, and still is, the owner and entitled to the possession of the lands and premises in plaintiff's complaint, and hereinafter particularly described, and each and every part or portion

thereof. That none of the defendants are entitled to possession of said lands and premises, or any part or portion thereof, and that plaintiff is entitled to the immediate possession of the whole of said lands and premises, and to a writ of possession thereunder; and also to its cost herein expended, hereby taxed at ..... Dollars, which costs shall be taxed against all of the defendants, except those who have filed their disclaimers herein, and plaintiff shall also have judgment for the rents, issues and profits of said premises in accordance with the facts as found herein, for all of which let judgment be entered, and the appropriate writ of possession and writ of execution issue.

The said lands and premises in the complaint herein mentioned and described, and hereinbefore referred to, are described as follows, to wit:

That certain grant of land known as, designated and called the San Juan de los Boquillas y Nogales, situated in Cochise County, Territory of Arizona, the exterior boundaries of which are as follows: Beginning at the initial monument number one, about one mile east of the New Mexico and Arizona Railroad bridge, which crosses the San Pedro river at the town of Fairbank, in said County, and running thence north fifteen degrees thirty-nine minutes West 27,286 feet to a rock chiseled Δ 2; thence north 1 deg. 58 min. east 12,655 feet to a rock chiseled Δ 3; thence north 88 deg. 2 min. west 10,090 feet to a corner rock chiseled Δ 4; thence south 1 deg. 58 min. west 14,201 feet to a rock chiseled Δ 5; thence south 15 deg. 39 min. east 28,340 feet to a rock chiseled Δ 6; thence south 10 deg. 2 min. east 33,434 feet to a rock chiseled Δ 7; thence north 79 deg. 58 min. east 10,090 feet to a rock chiseled Δ 8; thence north 10 deg. west 33,927 feet to the place of beginning, and containing 17,355.86 acres of land, be the same more or less.

Dated this June 23rd, A. D. 1902.

FLETCHER M. DOAN, Judge.

GEO. B. WILCOX, Clerk.

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Clerk.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 105.

H. C. HERRICK, A. V. NOYES, CHARLES LABROSSE, LEON LARRIEU, W. S. GRAY, AND PETER CRANE,
APPELLANTS,

vs.

BOQUILLAS LAND AND CATTLE COMPANY,
APPELLEE.

BRIEF FOR APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

FRANCIS J. HENEY,
Attorney for Appellee.

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1905.

No. 105.

H. C. HERRICK, A. V. NOYES, CHARLES LABROSSE, LEON LARRIEU, W. S. GRAY, AND PETER CRANE, APPELLANTS,

vs.

BOQUILLAS LAND AND CATTLE COMPANY, APPELLEE.

BRIEF FOR APPELLEE.

ON APPEAL FROM THE SUPREME COURT OF THE TERRITORY OF ARIZONA.

The case is accurately and fully stated in the original opinion of the supreme court of the Territory, which appears on pages 51 and 52 of the Transcript of Record on Appeal, supplemented by its opinion upon rehearing, which appears upon pages 59 to 62 of the same record.

It is deemed unnecessary to add anything upon the points discussed by the supreme court of the Territory in its opinion which was rendered upon the rehearing.

In addition, however, to the points there disposed of, the following are respectfully suggested for the consideration of this court:

Prior to September 1, 1901, there were three classes of cases only in which adverse possession could be successfully pleaded or proven in an action of ejectment, to wit:

1. Where the defendant relied upon two years' possession ONLY as against prior right of possession ONLY on the part of the plaintiff.

2. Where the defendant relied upon adverse possession under "TITLE" or "COLOR OF TITLE" for a period of three years. Under this section of the statute a chain of title from the sovereignty is required, and it is not pretended that any facts tending to show such chain of title were offered in evidence on part of defendants, or that any such facts were found by the trial court.

3. Adverse possession by the defendant for a period of five years under a deed duly registered, coupled with payment of taxes (if any levied) for the same period of time.

It is not pretended that any evidence was offered tending to show that any of the defendants claim under a deed duly registered, or that any taxes were paid on any of said land by any of said defendants, or that taxes were not levied upon any of such lands during the time said defendants claim to have occupied the same adversely to plaintiff.

The rule is that all of the incidents of the statute must concur and be continuing in connection for the time prescribed in order to complete the bar of the statute and the right conferred thereby (Converse *vs.* Ringer (Texas, 1894), 24 S. W. Rep., 705).

Moreover, section 2304, Revised Statutes of Arizona, 1887, provides that—

"'Adverse possession' is an actual and visible appropriation of the land commenced and continued under a claim of right INCONSISTENT WITH AND HOSTILE TO THE CLAIM OF ANOTHER,"

and the omission of the words "adverse" and "continuous" from the finding in relation to ten years' occupancy of the land by defendants makes that finding absolutely insufficient to overturn the judgment, for the reasons stated in the case just cited and the further reasons stated in the case of Leon and H. Blum Land Co. *vs.* Rogers (court of civil appeals, Texas, October 10, 1895), 32 S. W. Rep., 713).

In the last-mentioned case the court reconsidered the doctrine laid down in Converse *vs.* Ringer upon the question of what constitutes "adverse" possession where the occupant entered and continued to hold during his occupancy under the erroneous belief that the land was a part of the public domain, and, among other things, the court said:

"To hold that one who enters upon land and holds possession thereof with the intention to acquire title to it from the owner (the Government), as was done by Rogers, is one who 'enters and holds under a claim of right inconsistent with and hostile to the owner,' would be paradoxical."

Rogers had entered upon the land under the erroneous belief that the land was owned by the State of Texas and had never been severed from the public domain.

On this point the court further said:

"But it is said, the occupant being mistaken as to the owner of the land his possession is hostile to the claim of all others save him whom he erroneously supposed was the owner. To reach this conclusion we must presume that had the occupant known the land was not public domain he would have entered and held possession under a claim of right in hostility to the owner. But the law indulges in no such presumption. On the contrary, he who asserts title to land under the statute of limitations can only establish his claim by competent and adequate evidence of a compliance with all the requirements of the statute."

And section 1352 of the Revised Statutes of Arizona, 1901, provides that—

"A defect of parties is waived if it is not pleaded in the answer or taken advantage of by demurrer."

Under the liberal statutes authorizing amendments the defendants could have amended their answers after all the evidence was in so as to take advantage of any defect of parties if the plaintiff is not the owner of the entire fee or is not entitled to maintain this action alone, and the failure of defendants to do so prevents them from raising the question for the first time in this court. They could only have raised it in the trial court by first asking permission to amend their answer in this respect.

Respectfully submitted,

FRANCIS J. HENEY,
Attorney for Appellee.

Campbell vs. Holt, 115 U. S., 625.
McFadden vs. Evans, Snider-Buel Co., 185 U. S., 513.

Besides in this case the fact the plaintiff stood by from 1833 and allowed the defendants to go upon the land and change it from a desert to an arable condition, and to improve it for a number of years, shows that plaintiff has been guilty of unpardonable laches, and should not be permitted to recover against the defendants. In such cases the courts apply the doctrine sua sponte, even though the laches are not pleaded or the bill not demurred to.

Penn Mutual Life Ins. Co. vs. Austin, 168 U. S., 697, and cases there cited.

Subdivision 7 of Section 13 of Act of March 3rd, 1891, establishing the court of private land claims, provides: "That the land court should not confirm any claims for land which was not complete and perfect at the time of the transfer of the sovereignty wherein the land is situated to the United States; and in Sena vs. U. S., 189 U. S., 233-242, this court held, that if the grant was a complete and perfect title, the remedy of the claimant was in the Territorial Court.

Appellee, in its brief in the Supreme Court of the Territory, claimed that until the Court of Private Land Claims there was no court within the Territory of Arizona which had jurisdiction to entertain a suit in ejectment based upon a Mexican title to land, even though such title was complete and perfect at the date of the Gadsden Treaty. This question has been decided adversely to that contention in U. S. vs. Martinez, 184 U. S., 444, and in U. S. vs. Conway, 175 U. S., 62.

Appellants contend that under the findings and stipulated evidence in this case, that appellee never did prove title to the property.

The only evidence of title in plaintiff was the patent issued by the United States to the heirs of Ygnacio Elias Gonzales and Nupumoceno Felix, their heirs, successors in interest and assigns, confirming

the Mexican grant made in 1833, and a deed from Phoebe A. Hearst and William R. Hearst to the plaintiff in the case. The patent copied the decree of the Land Court and recited, among other things, that the Rancho San Juan de las Boquillas y Nogales was presented by petition of Phoebe A. and William R. Hearst to Court of Private Land Claims for confirmation, and recited further that claimants acquired an undivided interest in and to said lands described in the grant, by conveyances executed to them by heirs at law of the original grantees hereinbefore named.

It is respectfully submitted to this court that recitations in a judgment between the United States and land grant claimants could not affect, under the very terms of the Act of March 3rd, 1891, persons who are in no way connected with that suit, and could not bind them.

Subdivision 5 of Section 13 of that Act, provides: "That no proceeding, decree, etc., under the Act, shall conclude or affect the private rights of persons as between each other, but shall be conclusive of the rights between the United States and all other persons claiming any interest, etc., in such lands."

Section 8 of the Act provides: "That the act of confirmation of a Mexican or Spanish grant, shall not affect any conflicting or private interest, etc.," and further provides: "That no confirmation shall have any effect other than as a release of all claim of title by the United States."

Subdivision 7 of Section 13 provides, that the Private Land Court shall not allow * * * a private title unless it was perfect at the time of the transfer of the sovereignty to the United States.

In the case of Sabariego vs. Maverick, 124 U. S., pages 283-284, the question of the effect of recitals in judgments is fully discussed and the maxim upon which the rule is founded, "ominia proesumuntur rite esse acta," is thoroughly examined. And the court, quoting from Best, in his Treatise on Evidence, says: "That the true principle intended to be as-

serted by the rule seems to be that there is a general disposition in courts of justice to uphold judicial and other acts rather than to render them inoperative, and with this view, where there is general evidence of facts having been legally and regularly done to dispense with proof of circumstances strictly speaking essential to the validity of those acts, and by which they were probably accompanied in most instances, although in others the assumption may rest upon grounds of public policy. Nowhere is the presumption held to be a substitute for proof of an independent and material fact."

The recital in the judgment in the Court of Private Land Claims that the Hearsts had an interest in the grant as against the United States, certainly does not prove that they have any title as against these defendants.

The question between these defendants and the Hearsts was not tried in that case. They were not parties or privies to the judgment, or privies in estate or in law, but were strangers, and claimed by title paramount to the patent. Recitals of this kind, say the court in the case last cited, do not bind persons claiming by an adverse title or persons claiming by title anterior to the date of the reciting deed.

It is respectfully submitted that the case should be reversed and new trial be granted to appellants.

Respectfully,

BEN GOODRICH,

Attorney for Appellants.

It is urged that the statement in the finding as to it having been decreed that there was an undivided interest in William R. and Phebe A. Hearst, was adopted from a decree to that effect rendered by the Court of Private Land Claims, established under the act of March 3, 1891. (26 Stat. 854.) From this it is deduced that the recital in the patent as to the title in W. R. and Phebe A. Hearst was *res inter alios*, and that in the absence of an express and substantive finding of title in the parties named from the grantee of the Mexican Government the mere recital on the subject in the patent furnished no support whatever for the legal conclusion that there was title. This is based upon the terms of sections 8 and 13 of the act establishing the Court of Private Land Claims, wherein it was provided that the effect of a confirmation of a grant by that court should be only to quitclaim the title and not to affect the interests of third parties. But, conceding that the patent as asserted is based on a decree of the Court of Private Land Claims, and that its recitals are controlled by the terms of the act creating that tribunal, the proposition is without merit. (*Knight* v. *Land Association*, 142 U. S. 161, 188, 189.) In that case it was held that although a patent which had been issued in consequence of the report of a tribunal appointed by Congress, merely quitclaimed the rights of the United States and saved the rights of third parties, it nevertheless was conclusive as to the existence of a record title upon those claiming to hold under rights which originated subsequent to the cession, and, *a fortiori*, as to a person claiming title by mere possession. By the application of this doctrine it follows that the judgment confirming the land grant and the patent thereunder, which specifically decreed an interest in the confirmed grant to the parties named, was adequate to establish a record title as against persons asserting the character of rights upon which the defendants relied.

Second. It is further insisted that, in view of the finding of the court below as to possession of the defendant for more than ten years prior to the commencement of the action, the findings are inadequate to sustain the legal conclusion of the right of the plaintiff to recover, because of the force and effect of the period of limitation prescribed in paragraph 2938 of the Revised Statutes of Arizona for 1901. That paragraph is as follows:

"Any person who has a right of action for recovery of any lands, tenements or hereditaments against another having peaceable and adverse possession thereof, cultivating, using and enjoying the same, shall institute his suit therefor within ten years next after his cause of action shall have accrued, and not afterward."

The court below held, and its ruling on this subject is not questioned, that prior to the adoption of this revision of the Arizona statutes there was no statute of limitations in that Territory barring a right of action for the recovery of lands by one claiming title against another holding merely by

peaceable and adverse possession. The revision went into effect on September 1, 1901, and the present action was brought a few days prior to such date, viz., on August 26, 1901.

In approaching the question whether paragraph 2938 was applicable to the case, the court below assumed that the effect of the finding as to possession by defendants was to show peaceable and adverse possession by them for the period of ten years. The court, however, decided that under no canon of construction or rule giving a retroactive effect to a new statute of limitation could paragraph 2938 be made to apply to this case. Thus, suggesting the possible constructions which might be claimed for the paragraph, it was said that if construed as absolutely barring causes of action existing at the time of its passage, it was unconstitutional, citing *Sohn* v. *Waterson*, (17 Wall. 596.) Further, that even if the statute were construed as providing that all actions existing at the time of the passage of the statute should be barred if not sued upon within the time which elapsed between the date of such passage, and the date fixed for the going into effect thereof, this action was brought within such period and the statute could not operate as a bar, citing *Wrightman* v. *Boone County*, (82 Fed. Rep. 413) and various State decisions therein referred to. And, lastly, it was decided that if the paragraph was construed as not applying to a suit which, though commenced after the passage of the act, was pending at the time the same took effect, the statute had no application, citing *Vreeland* v. *Town of Bergen*, (34 N. J. Law, 438.)

We think the Supreme Court of the Territory was clearly right in the views which it thus expressed, and therefore it committed no error in determining that under no possible hypothesis could the limitation prescribed in paragraph 2938 of the Revised Statutes of Arizona operate to bar the plaintiff's action, in view of the findings of fact in respect to the title of plaintiff.

Affirmed.

True copy.

Test:

Clerk Supreme Court, U. S.

Supreme Court of the United States.

No. 105.—October Term, 1905.

H. C. Herrick, A. V. Noyes, Charles Labrosse, Leon Larrieu, W. S. Gray, and Peter Crane, Appellants, vs. Boquillas Land and Cattle Company. } Appeal from the Supreme Court of the Territory of Arizona.

[January 2, 1906.]

Mr. Justice White delivered the opinion of the Court.

This is an action of ejectment, commenced in August, 1901, by the appellee, to recover a tract of land containing 17,355.86 acres, and damages for the alleged unlawful withholding of possession. It was alleged that the plaintiff was the owner and entitled to the possession of the described land, and that title had been in it or in its grantors and predecessors in interest ever since January 1, 1875; and the defendants—thirty in number—were alleged to have unlawfully withheld possession of the premises in dispute from about November 28, 1900. Some of the defendants filed disclaimers or failed to answer. The appellants and others jointly answered, relying solely on rights alleged to result from an asserted adverse possession by each of them of a portion of the demanded premises for more than twenty years prior to the bringing of the action. The case was tried to the court without a jury. The court made findings of fact and stated its conclusions of law thereon. Thereupon judgment was entered in favor of the plaintiff. On appeal, the Supreme Court of the Territory affirmed the judgment; and the opinions delivered on the original hearing and on a rehearing are reported in 71 Pac. Rep. 924 and 76 Ib. 612. The Supreme Court adopted the findings of fact made by the trial court. The findings thus adopted as to the title and right of possession of the plaintiff were as follows:

"That on the 8th day of May, A. D. 1833, the Mexican Government, by good and sufficient grant conveyed to plaintiff's grantors and predecessors in interest the lands and premises herein described, being the lands and premises in controversy.

"That on the 14th day of December, in the year of our Lord, one thousand nine hundred, the Government of the United States, by its letters patent, recognized and confirmed the validity of the said grant of lands in plaintiff's complaint, and hereinafter particularly described, to Ygnacio Elias Gonzales and Nepumoceno Felix, and to their heirs, successors in interest and assigns forever; and found and decreed that W. R. Hearst

and Phebe A. Hearst had acquired an undivided interest in such lands and premises of the said two grantees.

"That on the 3d day of July, 1901, the said W. R. Hearst and Phebe A. Hearst, by deed in writing, conveyed all of their said interest in and to the said lands and premises to the plaintiff herein, and that plaintiff has not since disposed of its title so acquired, or any part thereof, to said lands and premises."

In addition, the trial court, among its conclusions of law, incorporated the following:

"That plaintiff and its predecessors and grantors in interest have been since the 1st day of January, 1875, and ever since have been, and still are, the owners and entitled to the possession of the lands and premises in plaintiff's complaint, and hereinafter particularly described, and each and every part and portion thereof."

The Supreme Court of the Territory, in its opinion on the rehearing, held this latter statement to be not a mere conclusion of law but the finding of an ultimate fact, and the court therefore adopted it as part of the findings of fact upon which it based the decree of affirmance. As to possession by the defendants it was found as follows:

"That each and every of said defendants in this cause were, on the 14th of December, 1900, and had been for more than ten years next preceding that date, occupying various portions of the said lands and premises, and each and every of the said defendants who have failed to appear and answer herein have since the last-named date withheld possession of divers portions of said lands and premises from the plaintiff and its grantors and predecessors in interest, and still and now so withhold the same; that since the said December 14, 1900, the annual value of the rents, issues and profits of that part of said lands and premises so withheld from plaintiff, by the said defendants, is as follows, to wit: . . ."

This appeal was prosecuted.

On appeal from the Supreme Court of a Territory our jurisdiction, apart from exceptions duly taken to rulings on the admission or rejection of evidence, is limited to determining whether the findings of fact support the judgment. (*Harrison* v. *Perea*, 168 U. S. 311, 323, and cases cited.) As on this record there is no question presented as to rulings of the court in respect to the admission or rejection of evidence, we can alone consider the sufficiency of the findings.

The errors assigned are sixteen in number, and resolve themselves into three classes:

1. Those which assert that the Supreme Court of the Territory refused to consider the findings made by the trial court, and this embraces the first, second and fifth assignments. But these assignments disregard the opinion of the Supreme Court of the Territory delivered on the rehearing, and do not require further notice.

2. Those which question the sufficiency of the evidence to support the findings of fact. These are numbered eight and thirteen, and likewise need not be further referred to, as they address themselves to a matter not open for our consideration.

3. Assignments which in various modes of statement attack the sufficiency of the findings made by the trial court and adopted by the Supreme Court of the Territory, which include all of the assignments not already disposed of.

The contentions concerning the insufficiency of the findings to support the judgment are resolvable into two propositions, which we shall separately consider:

First. That, irrespective of the adequacy or inadequacy of the possession asserted by the defendant below, the findings are insufficient to sustain the legal conclusion of title in the plaintiff. This proposition rests upon the premise that the matter included in the conclusions of law of the trial court, which the Supreme Court held to be a finding of fact, and which it adopted as such, was but a mere conclusion of law, and, therefore cannot be considered in determining the sufficiency of the findings of fact to sustain the deduction of law made by the court below as to title in the plaintiff. And with this premise it is insisted that if the findings of fact proper are alone considered they are insufficient to establish title in the plaintiff, because, although they show the Mexican grant, and its confirmation and a conveyance by William R. and Phebe A. Hearst to the plaintiff of an undivided interest in the land, the findings fail as against defendant to show any title whatever in William R. and Phebe Hearst, or in the plaintiff as their grantee, derived from the grantees of the Mexican Government.

Conceding, merely for the sake of argument, the correctness of the premise, we think the proposition based thereon is without merit, since the findings, without reference to the action of the court in adopting the particular finding referred to, sustain as against the defendants the conclusion as to title. Those findings are that the plaintiff held title to an interest in the land in controversy, acquired by reason of a conveyance made on the third day of July, 1901, by William R. and Phebe A. Hearst. They, moreover, established that the land thus conveyed was originally acquired by the predecessors and grantors of the plaintiff through a grant made by the Mexican Government in 1833, and that "on the fourteenth day of December, in the year one thousand nine hundred, the Government of the United States, by its letters patent, recognized and confirmed" said Mexican grant to two named individuals, "and to their heirs, successors in interest and assigns forever; and found and decreed that W. R. Hearst and Phebe A. Hearst had acquired an undivided interest in such lands and premises of the said two grantors."